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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Note by the United Nations High Commissioner for Human Rights

The High Commissioner for Human Rights has the honour to transmit to the members of the Commission on Human Rights the report of the meeting of experts on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, which took place in Geneva from 29 January to 2 February 2001.

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Annex

REPORT OF THE MEETING OF EXPERTS ON THE TRADITIONAL AND NEW FORMS OF MERCENARY ACTIVITIES AS A MEANS OF VIOLATING HUMAN RIGHTS AND IMPEDING THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION

Geneva, 29 January-2 February 2001

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Introduction

1. In paragraph 12 of resolution 54/151, the General Assembly requested the High Commission for Human Rights to convene expert meetings to study and update the international legislation in force and to propose recommendations for a clearer legal definition of mercenaries that would allow for more efficient prevention and punishment of mercenary activities.

2. At its fifty-sixth session, the Commission on Human Rights adopted resolution 2000/3. In paragraph 10 of that resolution, the Commission decided, in accordance with the request of the General Assembly, to convene a workshop on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It also requested the High Commissioner to report on the outcome of the workshop to the Commission at its fifty-seventh session.

3. In accordance with these resolutions, the Office of the High Commissioner for Human Rights extended an invitation to nine experts from different geographical regions to attend an expert meeting from 29 January to 2 February 2001 on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Special Rapporteur of the Commission on Human Rights on the issue since the inception of the mandate, Mr. Enrique Bernales Ballesteros, was also invited to participate.

4. The following experts attended the meeting: Professor Chaloka-Beyani (Zambia); Professor Javier Guerrero Baron (Colombia); Ms. Julia Kalinina (Russian Federation); Mr. Damian Lilly (United Kingdom of Great Britain and Northern Ireland); Doctor Olga Miranda Bravo (Cuba); Professor Abdel-Fatau Musah (Ghana); Mr. Ravi Nair (India); Ms. Anne Ryniker (Switzerland). Mr. David Shearer (New Zealand), the ninth expert invited to participate, was unable to attend.

5. On 29 January 2001, the meeting decided that the Chair would rotate. Ms. Ryniker agreed to act as Rapporteur. The meeting proceeded to adopt the agenda. Each expert was invited to contribute a paper on a given topic to present to the meeting, which would be followed by a general discussion on the subject.

6. The present report contains summaries of the papers presented by the Special Rapporteur and the experts and of the discussions that followed, as well as conclusions and recommendations.

I. BACKGROUND TO THE RESPONSE OF THE UNITED NATIONS TO THE MERCENARY PHENOMENON

7. The Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries, Mr. Enrique Bernales Ballesteros, in his presentation on the background to the response of the United Nations to the mercenary issue, made reference to resolutions of the Economic and Social Council, the General Assembly and the Commission on Human Rights on the matter. Since his appointment in September 1987, the Special Rapporteur had undertaken a

survey of mercenary activities, reviewed the state of international law on the question, developed a typology of mercenary activities and made an analysis of cases of mercenary activities reported in the past and of the way they had been dealt with in the international forums.

8. The Special Rapporteur recalled that mercenary practices went far back in time and were relatively frequent, tolerated and even encouraged by States themselves or the political organizations out of which they grew. At a later stage, mercenary forces were used to overthrow or destabilize some of the Governments of States that had won their independence as a result of the decolonization process. In response to reports of increasing and very diverse mercenary activities, the General Assembly established in 1979 the Ad Hoc Committee on the Drafting of an International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The General Assembly adopted the International Convention on 4 December 1989. Twenty one States had completed the process of ratification of the Convention.

9. Mercenary activities were related to such internationally unlawful acts as interference in the internal affairs of other States, military opposition to national liberation movements, violations of the territorial integrity, sovereignty and independence of States and the destabilization and overthrow of legitimate Governments, subordination of the target country to the interests of the Power instigating the conflict and the violation of fundamental human rights. Mercenaries tended to be present mainly in armed conflicts, where they offered their services to one or more parties to the conflict in exchange for payment. Mercenaries also committed serious crimes, such as trafficking of persons, drugs and arms and terrorist attacks.

10. In their current state, international norms concerning mercenaries were inadequate and ambiguous as regards their interpretation and application. This situation was compounded by the lacunae that existed in the national legislation of most countries, which did not characterize mercenarism as a separate crime.

11. The Special Rapporteur also noted that the recruitment and hiring of mercenaries had become a profitable business and that the number of persons prepared to become mercenaries had increased. No significant progress had been observed in reducing the number of mercenary activities. Parties to armed conflicts continued to hire mercenaries to boost their military might and capacity to do damage.

12. The Special Rapporteur explained that it was necessary to distinguish between "mercenary" as a concept related to the agent, and "mercenarism" as a concept including all phases of the crime: its planning, design, and the involvement of States.

13. An expert raised the question of the possible mercenary character of "praetorian guards" in African and Asian countries. Another expert noted that the position of several African Governments with regard to the use of mercenaries had changed from total rejection to their authorized use in some circumstances and situations. Another expert stated that mercenaries principally came from developed countries with high military technology. The Special Rapporteur said that according to his information, they came from 17 countries.

14. The Special Rapporteur closed his presentation by stating that individuals had different motivations than States, enterprises or criminal organizations. His mandate had been easier to

carry out at the beginning, during early 1990, as since the end of the cold war the problem of the use of mercenaries had became more complex. During his years as Special Rapporteur, no Government had attempted to justify mercenary activities in any way in its replies to his communications. He added that the apparent connection between an increase in mercenary activity and the inadequacy of international rules in that area should be examined. Mercenaries based their claims to comparative advantage and greater efficiency on the fact that they did not regard themselves as being bound to respect human rights or the rules of international humanitarian law.

II. INTERNATIONAL LEGISLATION

A. Article 47 of Additional Protocol I to the Geneva Conventions

15. One expert made a presentation about international humanitarian law, and in particular article 47 of the Additional Protocol I to the Geneva Conventions, and its implications for the phenomenon of mercenaries.

16. The expert explained that international humanitarian law (IHL) was a set of rules which, for humanitarian reasons, sought to limit the effects of armed conflict. It protected those who were not, or were no longer, taking part in the fighting and restricted the means and methods of warfare. IHL was applicable irrespective of the legitimacy of the use of force and applied for the aggressor and the victim of the aggression alike.

17. The attempt to outlaw mercenaries by using the laws of warfare confused the *ius ad bellum* (part of the law of peace that regulated the use of force) with the *ius in bello* or IHL (the law that regulated hostilities once they had begun). During the negotiations on Additional Protocol I, the Swiss delegation was of the opinion that that provision had no place in a humanitarian convention and that the prohibition of the use of mercenaries should be the subject of a special treaty. Many scholars now agreed with that statement. The expert quoted Frits Kalshoven: "Article 47 might prove to have done considerable harm to the cause of humanitarian law as it runs counter to the basic rule that in principle, all those who take an active part in hostilities should be treated equally and without discrimination on the basis of their motives for joining the fighting".

18. When considering article 47, the expert recalled the importance of keeping in mind the historical situation at the moment the provision was adopted in 1977. The 1960s and the 1970s had seen decolonization and the recognition of the right to self-determination. At the same time, concern appeared at the extent to which mercenaries were involved in the decolonization process. The United Nations began to condemn the use of mercenaries and to declare support for national liberation movements, mainly in connection with the independence process taking place in various parts of Africa. In 1968, the General Assembly declared that the practice of using mercenaries against national liberation movements was a criminal act and characterized mercenaries as outlaws. Article 47 of Protocol I was the product of those politically and emotionally charged debates. It was therefore not extraordinary that Protocol I endorsed a new position, characterizing wars of liberation no longer as internal but as international conflicts.

19. Article 47 considered mercenaries in general terms and did not take into account whether they fought against a national liberation movement. The Protocol referred to "mercenary" but not to "mercenarism", which was a broader concept that included the responsibilities of the States and organizations concerned in mercenary acts. The mere fact of being a mercenary was not made a criminal act.

20. Paragraph 1 of article 47 stated that "A mercenary shall not have the right to be a combatant or a prisoner of war". In an international armed conflict, a captured combatant usually had the status of prisoner of war (POW). A POW could be detained until the end of the hostilities and could be prosecuted for war crimes, but not for having been engaged in the conflict itself. Under article 47, a mercenary could be condemned under national law, even to death, solely for having been a mercenary.

21. The expert noted that although a mercenary did not have the right to claim combatant status, the State could nevertheless grant him that status. And even though mercenaries could not claim POW status, they remained protected by the fundamental guarantees stipulated in article 75 of Protocol I such as the prohibition of torture or the right to judicial guarantees. Besides, if there was any doubt concerning the status of a mercenary, article 5 of the Geneva Convention Relative to the Treatment of Prisoners of War, provided that such person shall enjoy protection until his status had been determined by a competent tribunal.

22. If there was widespread support for the inclusion of a provision denying combatant and POW status to mercenaries during the negotiations on Protocol I, it proved to be somewhat difficult to translate it into a definition of mercenary. Some delegations favoured a short and simple definition, while others called for an enumeration of criteria and the exclusion of certain types of individuals from the definition. Given that the definition could have life or death consequences for a person charged with being a mercenary, delegations thought it was important to find a definition that reduced the risk of misusing it and placing the lives of lawful combatants at risk.

23. Finally, the almost automatic outlawing of mercenaries was tempered by the introduction in article 47 of six criteria which must be fulfilled to meet the definition of a mercenary. This very restrictive definition could easily be circumvented. As Geoffrey Best said: "any mercenary who cannot exclude himself from this definition deserves to be shot and his lawyer with him!".

24. The expert described the main problems of the definition as follows. Paragraph 2 of article 47 stated that a mercenary is any person who "(a) is specially recruited locally or abroad in order to fight in an armed conflict." It must then be proved that a special recruitment operation for a special conflict had been organized. That would be difficult, because such operations were mostly secret. Second, the person "(b) does, in fact, take a direct part in the hostilities." That would exclude advisers, trainers, persons who recruited others to fight as mercenaries and those who furnished arms. Third, the person "(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party." Motivations of

belief, ideology or politics were excluded, making this one of the most criticized criteria because a definition which required positive proof of motivation was seen as unworkable. It would be very easy for the mercenary and for the employer to hide the fact of compensation bearing in mind that mercenaries' wages were paid either in their own countries or into bank accounts in other countries." Fourth, the mercenary "(d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict." If necessary nationality or residency could be granted by the State without problem. Fifth, the mercenary "(e) is not a member of the armed forces of a Party to the conflict." It would suffice to integrate the mercenary into the State's armed forces. This criterion had been introduced explicitly to exclude Nepalese Gurkhas in the United Kingdom, members of the French Foreign Legion and Swiss Papal Guards. Last, the mercenary "(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces."

25. The expert explained that although article 47 had been adopted by consensus, it should not be thought that all delegations were fully satisfied with the final text. A number of delegates said that they would have preferred a stronger text which would have required States to prohibit recruitment and training, and to prohibit their citizens from enlisting as mercenaries. Even if some States were not satisfied with the final result, many said that it was probably the best compromise possible at that time. And it has been seen as a first step by the international community. Some delegations said that the text might be supplemented by regional agreements, and in fact the Organization of African Unity adopted its convention the same year.

26. The expert stressed that moreover article 47 of Protocol I was applicable only in international armed conflicts. Common article 3 of the Conventions and Protocol II governed non-international conflicts; none made any reference to mercenaries. There was no mention of mercenaries with regard to non-international armed conflicts, owing to the fact that in such conflicts there was no immunity for merely having taken up arms. The Government could condemn any dissident combatant for doing so, even if he had not committed any war crimes.

27. Finally, if traditional mercenaries could easily evade the restrictive definition of article 47, the expert indicated that the definition did address the issue of private security companies. It would make no sense to look for ways that article 47 could be used to prove that individual employees of private security companies could be classified as mercenaries. The expert thought an ad hoc regulation for this issue was necessary.

28. Concerning these private security companies some principles of IHL were recalled. If a State, a rebel group or a multinational company recruited military personnel through a private security company and if these persons participated in combat, then they had to respect IHL. Under IHL, persons were criminally responsible for the violations they committed personally or that they ordered committed. Besides, the fact that a subordinate committed a violation of IHL did not absolve his superiors from penal or disciplinary responsibility if the latter knew or had information which should have enabled them to conclude that the subordinate was committing a crime (Protocol I, art. 86). Nevertheless, if individual criminal responsibility existed under IHL, for the time being there was no criminal responsibility for legal persons.

B. International Convention against the Recruitment, Use, Financing and Training of Mercenaries

29. The genesis of the International Convention was described. On the initiative of Nigeria, a Special Committee was formed in 1979 to elaborate a convention against the recruitment, use, financing and training of mercenaries. The Special Committee had to address four principal questions: the definition of a "mercenary", the extent of both individual and State responsibility, the extent and basis of jurisdictional competence and, finally, judicial cooperation in the provision of evidence and extradition.

30. From the outset of the discussions, two opposite positions emerged: on one side States of the third world and socialist countries and, on the other side, Western States. The first group wanted a political approach to the problem, the second group a legal one.

31. After nine years of hard discussions, the Convention was finally adopted by consensus by the General Assembly in resolution 44/34 of 4 December 1989. But, more than 10 years after its adoption, the Convention has still not entered into force, lacking one ratification to obtain the 22 necessary.

32. The Convention foresaw two types of offences. The first one consisted in recruiting, using, financing, or training mercenaries and the second one concerned the mercenary himself when participating directly in hostilities or in a concerted act of violence. Attempt and complicity were also criminalized.

33. The definition of the mercenary as given in Additional Protocol I was adopted as a starting point in the negotiations, but it appeared that it did not answer one of the basic concerns of third world countries: the use of mercenaries to overthrow a Government, or analogous situations.

34. In addition, the exclusion of a national from the definition and the criteria to define what was meant by "private gain" were hotly discussed. Very soon the Special Committee decided to adopt two different definitions. The first one applied in cases of armed conflict, whether international or non-international (art. 1, para. 1): it was almost word for word the definition contained in article 47, except that subparagraph (b) was taken out and constituted the subject of a separate article 3. Indeed, it was decided to delete the "direct participation" in hostilities from the definition so as not to link the prosecution of those committing the second type of offence, i.e. the recruitment of mercenaries, to their active participation in combat.

35. The second definition was an adaptation of the definition contained in paragraph 1, but was broader (art. 1, para. 2): "A mercenary is also any person who, in any other situation: (a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: (i) overthrowing a Government or otherwise undermining the constitutional order of a State; or (ii) undermining the territorial integrity of a State; (b) is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; (c) is neither a national nor a resident of the State against which such an act is directed; (d) has not been sent by a State on official duty; and (e) is not a member of the armed forces of the State on whose territory the act is undertaken.

36. The inclusion of other elements (i.e. subparagraph (a) (i)) was discussed at length. Third world countries wanted to introduce also the repression of the struggle of people fighting against colonial domination, alien occupation or racist regimes; Western States, still having colonial possessions, could not accept their demand. The compromise reached finally was that opposing the struggle of peoples seeking to exercise their right of self-determination was deleted from the definition of the mercenary but was introduced in another article of the Convention, namely article 5, paragraph 2 of which says: "States Parties shall not recruit, use, finance or train mercenaries for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self determination, as recognized by international law, and shall take, in conformity with international law, the appropriate measures to prevent the recruitment, use financing or training of mercenaries for that purpose."

37. One of the problems of adapting article 47 of Protocol I to the second definition envisaged in the Convention was the question of "private gain", which gave rise to lengthy discussions. Third world States held that in certain circumstances even modest remuneration could be sufficient for a person to accept to be recruited as a mercenary. As it was true that in the situations concerned the comparison with "compensation paid to combatants of similar rank in the armed forces of that party" was not relevant, the criterion was adapted as follows: "[a mercenary] is motivated to take part [in a concerted act of violence] essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation".

38. The other point that had to be adapted from the definition contained in article 47 of Protocol I was the one concerning the nationality of the mercenary. States such as Nicaragua and Cuba wanted to delete this condition, which would have automatically excluded the possibility of considering the "Contras" as mercenaries. But Western States supported the opposite opinion, saying that even the OAU maintained this condition. The expert expressed the view that without it, a consensus on the Convention would probably never have been reached.

39. Contrary to IHL, the Convention created international offences and set binding obligations upon State parties (art. 5 ff). States were also required to cooperate in the prevention of the offences and to make the Convention offences punishable by appropriate penalties. Each State party shall take such measures as may be necessary to establish relevant jurisdiction and prosecute or extradite. Unfortunately, the principle *aut dedere aut judicare* was said to be of little importance when there were so few States parties.

40. The safety clause in article 16 stipulated that the Convention would be applied without prejudice to "[t]he law of armed conflict and international humanitarian law, including the provisions relating to the status of combatant or of prisoner of war", meaning that the mercenary should enjoy the fundamental guarantees and the protection of article 5 of the Third Geneva Convention if there was any doubt concerning his status.

41. The expert concluded by saying that humanitarian law did not provide an appropriate forum to combat mercenary recruitment as such. The United Nations Convention was the preferred regulatory approach to the mercenary problem. But the weaknesses of the Convention were well known. In particular, there was no control mechanism and its definition was no better

than the one contained in article 47. In that respect, the expert recalled the conclusion of the Diplock Report (United Kingdom) that: "... any definition of mercenaries which required positive proof of motivation would be unworkable [and that] mercenaries can only be defined by reference to what they do and not by reference to why they do it".

42. Moreover, the expert underlined that States were not interested in tackling the problem like they did at the time when the texts were negotiated, i.e. from the rather narrow anti-colonialist viewpoint. That fundamental approach was considered no longer to be relevant. In particular the problem of private security companies should not be addressed on the basis of the mercenary issue as it was dealt with in the 1970s. In that sense, the expert regretted that despite their interesting contents, the reports prepared by the Special Rapporteur were still focused on the old approach, as was evident in its title. In ending the presentation, the expert advised that any attempt to regulate private security companies must recognize the difference between *ius in bello* and *ius ad bellum*.

III. REGIONAL LEGISLATION: THE OAU CONVENTION

43. One expert argued that the OAU Convention could be considered more elaborate than the International Convention as it devoted a substantive paragraph to the purpose for which the act of mercenarism was committed: opposing by armed violence a process of self-determination, stability of another State or its territorial integrity. Article 1, paragraph 2 (a) of the OAU Convention clearly held States or their representatives, individuals, groups or associations responsible for acts of mercenarism. The terms "Group" or "Association" and "juridical" were crucial in the light of current manifestations of mercenarism. Thus, a private security company or a private military company or a corporation could be prosecuted for crimes of mercenarism committed by individuals hired by them. This was in addition to the prosecution of the individuals themselves.

44. Article 6 of the OAU Convention prevented the use of territories of African States as transit routes by mercenaries and was quite eloquent when it came to the responsibilities and obligations of States to discourage and root out mercenary activity from their territory. The OAU Convention went further, requesting States to enact laws in consonance with the Convention to prosecute mercenaries (arts. 7 and 8), and stipulated unambiguously that States had a duty to offer all necessary assistance to victim States in matters of investigation (art. 10) and extradition (art. 9) related to mercenary activity. However, no African State had taken a cue from the Convention to integrate its provisions into domestic law in any meaningful way.

45. The expert noted some of the main reasons for the shortcomings and the ineffectiveness of the OUA Convention. Concepts of self-determination, stability and territorial integrity had lost their original meaning as understood in the process of decolonization, the anti-apartheid struggle and the consolidation of political independence. The meaning of self-determination had shifted to internal self-determination, a right recognized by the African Charter of Human and People's Rights. The Convention covered almost exclusively the question of extraterritorial deployment of mercenaries but was silent on internal deployment.

46. The expert proposed that the Convention should be updated to address the deployment of mercenaries by member States in internal conflicts. It was necessary to revise the articles

dealing with the pecuniary motives behind mercenary activities while broadening the articles dealing with the purposes of the mercenary activities as well as the impact of those activities. By means of an additional protocol, the OAU could add provisions to the Convention that banned the use of mercenaries by private military companies in situations of civil war and only permit the deployment of such companies in exceptional circumstances under very strict regulation. In situations of peace, the activities of those companies related to escort duties and provision of security guards could be permitted, in accordance with the laws of the State.

47. Lastly, the expert stated that for the proposals to have any effect, any OAU initiative on new legislation on mercenaries should be backed by similar initiatives at the level of the United Nations.

IV. NATIONAL LEGISLATION

48. An expert gave a presentation and analysis of various national legislation dealing with the issues related to mercenaries in the world and made some recommendations as to what national legislation should take into consideration.

49. The expert explained that the first, and by far the oldest, category of legislation to be passed relevant to mercenary activity was in response to the requirements of neutrality laws. The aim behind those laws was to ensure the neutrality of Western States in the event of armed conflict in which such States were not involved. The neutrality type of legislation was generally enacted under the title of foreign enlistment laws, as in the cases of the United Kingdom and the United States of America. In some cases, such as those of France and Sweden, criminal codes carried provisions which made the foreign enlistment of nationals criminal.

50. Foreign enlistment laws tended to prohibit totally the enlistment of nationals in the armed services of other States when those States were at peace with the State of nationality. They also prohibited the enlistment of nationals without the consent of the State of nationality. The effect of those laws was to prohibit the enlistment and the recruitment of nationals to fight as mercenaries in foreign wars.

51. The second type of legislation dealt directly with mercenaries and mercenary activity. An example can be found in Belgian law. Enacted in 1979, Belgian law prohibited recruitment (in Belgium) of mercenaries and the act of becoming a mercenary. The specific acts are punishable with a term of imprisonment. Exceptionally, effect is given to certain Security Council resolutions (161 (1961) and 169 (1961)) which were adopted during the involvement of Belgian mercenaries in the Congo. That and other experiences in the Congo accounted for the character and attractive quality of Belgian legislation. Interestingly, revisions made to the penal codes of the Russian Federation and countries of Eastern Europe after the break-up of the former Soviet Union had criminalized mercenary activity in that region.

52. The third type of legislation was that which regulated the provision of foreign military assistance as opposed to just mercenary activities, which dealt with direct participation in conflicts. The principal and most recent example of such legislation was the South African Regulation of Foreign Military Assistance Act passed in July 1998. The scope of the Act

covered natural and legal persons, including individuals and private military companies, who provided foreign military services from within the territory of South Africa to engage in mercenary activities.

53. The Act was an attempt to develop a legal instrument to address both traditional mercenaries and emerging private security and military companies. A distinction was therefore made within the legislation between mercenary activity and the provision of foreign military assistance. The Act did not use the definitions of a mercenary and mercenarism in the International and OAU Conventions, but instead defined mercenary activity to mean simply "direct participation as a combatant in armed conflict for private gain". Engagement in mercenary activity including recruitment, use or training, or financing, was, however, prohibited by the Act (sect. 2) within South Africa or elsewhere, also suggesting that it had extraterritorial effect.

54. The fourth type of legislation according to the expert, was that which included military services within arms export control systems. That was how the activities of private military companies were regulated in the United States. Those companies wishing to enter into contracts with foreign Governments to provide military services were dealt with in the same way as those supplying arms and other military equipment. The relevant legislation was the International Traffic in Arms Regulations (ITAR) introduced in March 1998. ITAR is included in the United States Arms Export Control Act of 1968 and was overseen by the Office of Defence Trade Controls in the Bureau of Political-Military Affairs of the Department of State.

55. Finally, the expert suggested that a number of key features should be included in the formulation and drafting of effective national legislation which would combine aspects of provisions relating to traditional mercenaries in international law as well as of the more recent efforts to provide regulation of private military companies. He also expressed the view that there could be a risk that the corporations would move to other States if the regulations were too strict, but hoped that many States would have similar legislation so that, in the end, the companies would have no way of avoiding them. He also recommended that a system be established that would allow monitoring of those companies, both in their country of origin and in the country where they provided services. The expert recommended that there be an explicit prohibition against paying such companies with natural resources, to prevent illegitimate Governments from using the natural resources of the State for that purpose.

V. MEASURES TO IMPLEMENT EXISTING LEGISLATION - SUPPLEMENTARY MEASURES TO EXISTING LEGISLATION

56. An expert presented for the consideration of the group several opinions and specific recommendations related to international measures for dealing with the new forms of mercenaries. He emphasized that his presentation was directed more specifically to the issue of private security companies.

57. The expert stated that there were at present a plethora of non-State private security groups, including volunteers, private militias, civil defence forces and vigilantes, that posed a common challenge to the State as the principle provider of security. In each case the monopoly over the use of force had moved outside the exclusive realm of the State into the private sphere. If there was a common denominator to all those manifestations, it was the trend towards the privatization of security and violence that was occurring in a number of countries where the State was weak and unable to provide security for its citizens.

58. The expert added that new forms of mercenaries, and in particular private security companies, fell outside the existent international instruments. There was thus a distinct lack of accountability within international law for the non-State privately motivated armed groups. It was important to realize that it was not so much a lack of legal instruments that was the problem but rather the failure to apply them. There were aspects of international human rights law relevant to this sort of issue, but they were set up to deal with State actors. These gaps and lack of accountability had led to a culture of impunity for the new forms of mercenaries committing grave violations of human rights.

59. In the view of the expert, any additional measures should only target the new forms of mercenaries and not the host of other non-State irregular groups that were very similar in character and displayed many of the same features. There needed to be a distinction made between new forms of mercenaries on the one hand and volunteers, arms traffickers, terrorists, organized crime consortia, etc. on the other. While mercenaries might be involved in such activities, which were certainly interrelated, it was necessary to deal with them conceptually separately if realistic and focused policy responses were to de developed. It was, furthermore, important that additional measures did not duplicate but rather coordinated with existing international instruments pertaining to the related issues for which a number of instruments already existed. The key purpose and consideration for the development of additional measures should therefore be to rectify the current lack of accountability for new forms of mercenaries in international human rights and humanitarian law. This might require not only legal measures but also new ways in which existing international human rights standards could be applied.

60. The expert noted that the existing international instruments were not strongly supported by the national legislation of Member States, not even those countries experiencing mercenary activity which, if they felt it necessary, could be expected to attempt to take unilateral action regardless of international standards. While there were notable concerns about the enforceability of international instruments such as the International Convention that stemmed from their narrow definition of mercenary, the obligations on States were, perversely, quite meagre. Therefore, if they were to be redrafted, it could be argued that they would not receive greater support from Member States than at present. That led to the conclusion that to amend existing international instruments might not be the priority at the present stage.

61. The expert added that another option could be an additional protocol to existing instruments to rectify the noted inadequacies and introduce supplementary measures to address new forms of mercenaries. However, it would be difficult to promote additions to instruments that were either poorly implemented, as in the case of the OAU Convention, or had not yet entered into force, as in the case of the International Convention. The expert emphasized that, while it might be an appropriate course of action at a later stage, the priority at present was to

ensure the effective implementation of existing instruments and further study of new forms of mercenaries in order to develop clear guidance as to how they should be addressed. The expert stressed that, as a start, the entering into force of the International Convention would represent an important step towards eradicating and preventing mercenaries in their traditional form. It would help characterize situations where mercenaries threatened the right of peoples to self-determination and assist in prosecuting and punishing such offenders, if appropriate extradition and prosecution procedures were enforced. It might even oblige States to regulate some, though not all, of the activities of private security companies that were deemed to be of a mercenary character. It was important to note that there was no monitoring mechanism attached to the International Convention. Once, or if, it did come into force the United Nations should introduce such a mechanism to ensure its effective enforcement.

62. The expert went on to add that national legislation was the most feasible and effective means of regulating new forms of mercenaries. He added that some countries did have legislation regulating the activities of modern-day private security companies and their supply of military assistance abroad, as opposed to traditional forms of mercenaries, but as yet there had been no initiatives to promote international standards for such legislation nor for ideological and other forms of new mercenaries.

63. In the view of the expert the priority at present was the development of effective model legislation and information-sharing amongst States to ensure best practice. In that regard the United Nations could work to assist and to promote international standards for model national legislation. It could also work with regional bodies so that collective action was taken in areas of the world that were either experiencing the problem or in regions from where private security companies originated.

64. Commentators on this issue suggested that a regulatory body could be set up under the auspices of the United Nations to register and monitor the activities of private security and military companies. Administered by an appropriate branch of the United Nations, companies would be certified only if they met an internationally agreed set of principles and standards reflecting international human rights and humanitarian law. As with the United Nations Register on Conventional Arms, it would be the responsibility of each Member State to gather and submit information on companies operating out of their territory. Such a mechanism would certainly help set important precedents for much-needed transparency and standard-setting in the international market for private security and military companies. Even though the register would be voluntary and not comprehensive to begin with, there would nonetheless be a willingness on the part of companies to submit information, as it would give credibility to what they were already doing in exchange for greater acceptance by the international community. There would also be an added incentive for those companies not already meeting the required standards to raise theirs. However, before such a system could be established there would need to be major advances in terms of supplier countries providing regulations for companies operating out of their territory. If the United Nations were to accredit companies, it might appear as if it had the power to authorize their use, which was clearly not the case. Such responsibility should remain within the competence of each Member State.

65. In relation to the mandate of the Special Rapporteur on the use of mercenaries, the expert stated that it had an important role to play in analysing, monitoring and reporting on the impact

on human rights of new forms of mercenaries. In the absence of legal safeguards the independent role of the Special Rapporteur of studying the issue and raising awareness of the problem provided public sanction for human rights abuses of new forms of mercenaries. However, the current wording of the resolution that supported the mandate of the Special Rapporteur arguably only reflected the problem as it was experienced in post-colonial Africa and the precise role played by mercenaries in that era. As a result, the issue came under agenda item 5 of the Commission on Human Rights on the right of peoples to self-determination and its application to peoples under colonial or alien domination of foreign occupation. This narrowly conceived interpretation of the problem had severely restricted the utility of the mandate. New forms of mercenaries threatened not only the right of peoples to self-determination, but also a host of other human rights. It could be more productive to place the issue under another agenda item of the Commission such as that dealing with civil and political rights. Furthermore, the activities of new forms of mercenaries such as private security companies did not at present come strictly within the current remit of the Special Rapporteur's mandate - something that the Special Rapporteur had himself noted. Officially, there was no mechanism within the United Nations system to study and monitor new forms of mercenaries to ensure the protection of human rights.

66. A revised mandate of the Special Rapporteur would provide a more comprehensive approach to the problem. It could also begin to promote the kinds of measures being offered at the present meeting. In that regard, the mercenary issue should not be taken up by the Sixth Committee of the General Assembly, as some delegations in the Commission on Human Rights would wish. Explicitly devoted to the drafting of legal documents, the Sixth Committee would be an inappropriate forum in which to analyse and discuss the consequences of new forms of mercenaries. Sending the issue to the Sixth Committee would pre-empt a thorough examination of the issue and represent the loss of an opportunity for dialogue on how the international community wished to address the question. As noted earlier, it was not so much a lack of law that was the problem, but rather the lack of any agreed policy response. A revised mandate for the Special Rapporteur could therefore help promote the sorts of measures that were required. In addition to promoting the development of and adherence to the existing legal framework, the revised mandate would also provide a means of reporting on and monitoring the new forms of mercenaries, and in particular the conduct of private security companies, so that they adhered to internationally agreed human rights standards. The new role of the mandate could also provide much-needed coordination amongst the diverse activities undertaken in different parts of the United Nations system that were currently tackling different aspects of the problem. A meeting should be convened as a matter of priority of all the different branches of the United Nations in order to provide conceptual clarity on the true nature of the problem.

67. The expert also made reference to a code of conduct, stating that there had been a number of instances of the use of private security companies by multinational corporations in the oil and mining industries which had led to human rights abuses. That had encouraged companies, with the encouragement of Governments and NGOs, to draw up codes of conduct and guidelines to safeguard against such occurrences. In particular, during 2000, the Governments of the United Kingdom and the United States took the initiative to convene a number of companies in the extractive sector and NGOs - all with an interest in human rights and corporate social responsibility - which led to the elaboration of a set of "Voluntary Principles on Security and Human Rights" to guide companies in maintaining the security of their operations whilst

ensuring the protection of human rights. It was important to realize, however, that, while important, voluntary codes of conduct were not enforceable and only formed a small part of a comprehensive regulatory framework for new forms of mercenaries. However, the initiative was an important advancement in needed accountability in the private security industry.

68. The expert also addressed the issue of self-regulation, stating that security and military companies often outlined in their company profiles the sorts of contracts that they were prepared to accept and those that they were not. Some companies, for instance, stated that they would not engage in combat roles, whereas others made it clear that they would only work for internationally recognized Governments. A number of companies also stated the principles and values which they pledged to abide by when accepting a contract from a client, including self-imposed measures to ensure adherence to international human rights standards and international humanitarian law during their operations. The adoption of self-imposed standards in that way was a means by which companies could gain greater acceptance. Such efforts by some of the more progressive companies were laudable and provided leadership in setting industry standards that other companies must aspire to. The United Nations could support such initiatives through appropriate dialogue with private security companies and training in international human rights standards. However, self-regulation by the industry was by no means rigorous or enforceable and should not divert attention away from more urgent forms of regulation.

69. The expert also made reference to arms export controls, stating that the link between new forms of mercenaries and arms trafficking was widely recognized. The use of weapons, usually small arms, was integral to their activities and there had been many instances of such actors being involved in the transfer of weapons into conflict regions by acting as arms-brokering agents. The expert added that there were few national or international controls over the activities of arms-brokering agents. However, there was growing interest by the international community in tackling the issue of arms trafficking and brokering. The draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and other Related Materials to the recently agreed United Nations Convention against Transitional Organized Crime was expected to be agreed shortly in Vienna during final negotiations. Mercenaries were in fact included in the preamble to the Protocol. In July, the United Nations would also be holding the Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects which would tackle a wide range of issues associated with illicit arms trafficking and represented an important opportunity to highlight the role played by new forms of mercenaries in the arms trade.

70. In the view of the expert, it was also feasible that in the future military services provided by private military companies might begin to fall within the scope of arms export controls, as already occurred in the United States regulatory system. In that regard, the European Union Code of Conduct on Arms Export adopted by EU member States in 1998 could be amended to incorporate military services and by so doing set important standards for arms-supplying nations that also had private military companies based in their territory. In a similar vein, the International Code of Conduct promoted by a group of Nobel laureates in fact already included military services within its definition of arms but had yet to be adopted by the international community.

71. Lastly, the expert asserted that to ensure that a comprehensive approach was adopted, it was important to develop preventive measures designed to discourage individuals from becoming involved in mercenary acts in the first place. The expert noted that there were a number of important United Nations initiatives in that regard. In the expert's opinion, the report of the Panel on the United Nations Peace Operation (the Brahimi report) contained key recommendations for improving the effectiveness and the capacity of the United Nations to conduct peacekeeping missions. It set out a broad framework within which the United Nations could take measures to help prevent violent conflicts and, in turn, the environment in which new forms of mercenaries were likely to be most active. Beleaguered States would in this way find it less necessary to use private military companies. Improvements in demobilization and reintegration schemes for former combatants would also make it less likely for them to engage in new mercenary activities. The prevention of violent conflict is, of course, a massive task, but preventive measures such as those represented practical ways in which the United Nations could help reduce new forms of mercenary activities.

VI. RELEVANCE OF THE INTERNATIONAL DEFINITION OF MERCENARY

72. An expert stated that in the International Convention there were two criteria characterizing the offence of mercenarism, one subjective (receiving payment or compensation) and the other objective (being recruited to fight in military groups or carry out acts of violence whose aims contravene international law). The subjective criterion of the desire for private gain was a necessary condition. The identifying characteristic of a mercenary's behaviour was the perverse intent that provided the subjective motivation. This subjective criterion was an essential element of the offence of mercenarism, not only because it was stipulated in the legislation, but also because it was one of the elements that set mercenarism apart from other criminal behaviour such as treason or enlisting in the armed forces of another State against one's own State. The only flag of a mercenary was his own private gain. Paragraph 2 (a) of article 1 of the Convention was more realistic than paragraph 1 (a), since the concept of "armed conflicts" was more restrictive than the idea of participation in acts of violence with defined aims. Thus paragraph 2 (a) and (b) of article 1 should form the core of the definition of mercenary, or at least have equal status with paragraph 1. In the definition given in the Convention, nationality figured as an eliminating factor, like residence, but, in the view of the expert, owing to developments in mercenarism, that could not be taken into account for present purposes. According to the objective criterion of the definition, nationals could be considered mercenaries even when they acted against the basic interests of their own country. In short, it was a mistake to refer to nationality in the definition of a mercenary. The mercenary became a mercenary merely by selling his effort to do harm at the behest of the person recruiting and paying him. The mercenary has no nationality, nor concept of homeland. A national acting against his own country is no less a mercenary, as long as the subjective criterion applies. That was the decisive factor in the offence.

73. It was absurd to define mercenary in terms of the level of compensation, as in paragraph 1 (b); it would have been sufficient to restrict this paragraph to material compensation and leave out the rest. It was not how much a mercenary was paid that made his actions punishable. Moreover, the language of the Convention, which attempted no less than a definition of an offence requiring maximum precision, included expressions such as

"substantially in excess". Who decides, and by what criteria, that the amount of compensation is substantially higher? This part of paragraph 1 (b) considerably weakened the definition of mercenary. The same applied to the use of the word "significant" in paragraph 2 (b).

74. Nor was it appropriate, in the expert's view, to make a connection to military operations by a country's armed forces since the status, organization and characteristics of armed forces were duly defined in humanitarian law, in the Geneva Convention and Protocols.

75. The topic of the use of mercenaries could not be discussed separately from the terrorist activities assigned to those mercenaries. The connection between mercenarism and international terrorism was implied by the Security Council, which stated in its resolution 748 (1992) that "Every State has the duty to refrain from organizing, investigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force". Moreover, whatever the definition of mercenary, the element of terror was present and mercenarism could therefore be said to have been, and to remain, the executive arm of international terrorism. It was important to have a clear definition of mercenarism and its criminal nature, so that when States defined it in their own criminal legislation they could adopt the same approach. The expert believed that concerted acts of violence, which were becoming more common than fighting in armed conflicts, should not be relegated to second place.

76. The experts had a discussion based on the presentation of the expert. Some of the experts felt strongly that the definition of mercenary should not exclude nationals of the State where the criminal acts were committed. Other experts recognized the problems this raised in practice, but felt that the requirement should be kept. In the end, no consensus was reached. The experts agreed that this situation required more analysis and discussion. Another expert stated that during the 1990s there had been a decrease in the military budgets of many States and a reduction of military personnel. That process was accompanied by a decline in United Nations peacekeeping operations and an increase in the establishment of private military companies. It had been recognized that there was a lack of accountability of these companies in terms of human rights violations. Some critics considered them a source of instability instead of a source of security. Governments' attitudes with regard to these companies ranged from a permissive position, to legal regulation, or even to proscription. Some Governments, in particular those where the highest number of mercenaries originated, seemed eager to keep all their options open.

VII. TRADITIONAL AND CURRENT FORMS OF MERCENARY ACTIVITIES

A. The case of Africa

77. One of the experts submitted a typology of African States at the end of the cold war, describing the forms and dynamics of the conflicts that were shaping them. Mercenary activity was at the base of trade and raw material exploitation during colonization. However, mercenary activities became prominent in the 1960s in the context of peoples' struggles to assert their rights to self-determination and independence. Mercenaries were hired by former colonial powers and other external interests to undermine the rights of the people of Algeria (1956), the Congo (1960s), the Comoros (1970s-1990s) and Benin (1970s) to assert their political independence and choose their leaders, or to destabilize sovereign States (Guinea, Angola, the Seychelles,

Mozambique). Since the mid-1980s, internal conflicts that were suppressed by cold war priorities had intensified and proliferated. Mercenary groups had become a major instrument in resource appropriation at almost no cost, as the struggle to recognize power relations within Africa intensified.

78. The archetypal mercenaries in Africa acted as "lone wolves" or in small bands, were motivated by financial gain, sentimentality, a feeling of racial and/or professional superiority or by adventure. They were very much a feature of current internal conflicts in Africa. However, they were hired more often by local "strong men", at times acting in tandem with foreign secret services, than by foreign Governments.

79. The advent of private military companies had not led to the decline of traditional mercenary activities in Africa. On the contrary, they had become new launching pads for traditional mercenary activities. Angola, the Democratic Republic of the Congo and Sierra Leone demonstrated that. The greater the number and variety of private security structures involved in any particular conflict, the deadlier and more intractable the conflict became. The unending cycle of violence in those countries could not be divorced from the interplay between illegitimate resource appropriation, transnational corporate greed, arms proliferation and impunity, all of which were linked to private military companies. Anti-élite sentiments, revulsion at the patronage system and extreme exclusion sparked the wars, which were very popular at the onset. As the struggles became protracted, they degenerated into resource-based and proxy wars.

80. The expert added that purely internal struggles for control of resources and, ultimately, for State power were made more sophisticated and deadlier by external influences, and that private military intervention in conflicts was a function of both dynamics. The conflicts in Africa were provoked by deep-seated causes - impoverishment of the majority by the few amidst gross abuse of human rights. By controlling resources - a primary cause of conflicts - and controlling the security of the State, the private military companies, with their mining partners, effectively controlled the sovereignty of the afflicted State. There was a need to focus international attention towards building the capacity of regional structures to deal with local conflicts. However, the international community, particularly the Western States, had been reluctant to extend any meaningful assistance to the Military Observer Group of the Economic Community of West African States until recently. The affluent States of the world should assist proactively in building the capacity of regional structures to manage local conflicts.

81. An expert stated that mercenaries were no longer adventurers, individuals recruited clandestinely to fight in an armed conflict, but professionals capable of conducting combat or teaching command skills. Traditional mercenaries had as their primary motivations profit or adventure. The question of military groups compelled by religion or ideology to fight in foreign countries was also discussed.

B. The case of Russia

82. An expert presented a typology of Russia, describing the diverse forms of violence that had emerged after the end of the cold war and their root causes linked to the socio-economic problems that Russia was facing.

83. The expert explained that there were very few choices for young males in Russia today. Too many youngsters were left with the only options of entering criminal gangs, being hired by private security companies to work as security guards to protect businesses or as body guards, or to enlist to fight in war zones as mercenaries. The criminal gangs were the roots of mercenary groups and in many cases were paid by parties to a conflict to carry out terrorist acts.

84. The expert explained that during the last 10 years Russians had many possibilities to participate in real wars as the break-up of the Soviet Union led to ethnic conflicts. Thus, Russian mercenaries were fighting in Nagorny-Karabakh (starting in 1989), on both the Azerbaijani and Armenian sides; in the Republic of Moldova, where they came to support Moldovan Russians who wanted to separate their region, Pridnestrovje, from Moldova; in Georgia, where in 1993 Russian mercenaries were fighting on the side of Abkhazia; in Tajikistan, where the Government was engaged in an endless battle with the opposition; in Yugoslavia, where Russians supported "brother Serbs" and, since 1994, in Chechnya. Approximately 2,000 mercenaries were fighting with the Chechens at present, and since the beginning of the war in 1994 approximately 5,000-7,000 mercenaries had taken part.

85. The expert explained that there were several categories of mercenaries in Chechnya. The first category consisted of rootless persons from East and South-East Asia who were occasional, non-professional recruits. The second category were just the opposite - professional soldiers, very experienced and well organized. These mercenaries were provided by Muslim extremist organizations and constituted their platoons and detachments among the Chechen ranks. They were paid through bank accounts in other countries. The funds used to pay mercenaries in many cases came from "legitimate" companies used as covers or whose completely legal profits were used for this purpose. If such a mercenary were wounded, his colleagues would bring him to a hospital in a third country, where a permanent representative of their organization would take care of all the expenses until complete recovery.

86. The third category was volunteers on the Russian side who were fighting because of deep, desperate poverty. Moreover, a huge part of them enlisted for the second Chechnya campaign because they had fought in the first campaign and were "infected" by war. In Russia they were called "dogs of war". Those mercenaries were the most dangerous because all the others could be reduced or eliminated by economic means or by new laws. But the "dogs of war" were pure products of war. They did not depend on poverty or a poor social situation as other types of mercenaries did.

87. The experts also noted that in the last few years mercenaries from Eastern Europe had been working in Latin America and Africa. They believed that this was due to the number of unemployed soldiers and cheap labour.

88. The experts discussed whether members of fundamentalist groups were mercenaries because of pecuniary reasons and not just from purely religious or ideological motives. Some of the experts expressed their conviction that many of them were fighting because of the high pay they received. In some cases they would enter the profession for religious or ideological reasons, but stayed and fought for monetary reward.

89. The experts identified as one the root causes of the problem of mercenaries that States after the cold war were not able to take appropriate measures to reduce their armies properly so that many former soldiers became mercenaries.

C. The case of Colombia

90. One of the experts presented a briefing on the situation in Colombia. He gave an overview of the internal context, its evolution and the worldwide context. He also explained the kinds of mercenarism in Colombia.

91. In the Colombian conflict, cases of mercenarism were not as frequent as in other conflicts, but some kinds of mercenarism could nevertheless be cited. First of all were cases of mercenarism *strictu sensu*, i.e. mercenaries along the borders with foreign countries involved in the Colombian conflict as armed actors. According to reports, foreign individuals had trained paramilitary armed forces in connection with drug trafficking and with private or para-State goals.

92. As the concept of mercenarism had a limited legal sense, the expert developed the concept of a mercenarism process, which was broader. This new concept would be applied in cases where individuals, including nationals, involved themselves in war in order to obtain personal profit. For example:

(a) Private armed forces or private justice groups. In many cases, owing to the lack of security, businessmen or business groups (legal or not) formed private armed forces in order to protect their companies and properties or in order to fight against other armed groups, trade unions, human rights defenders or to control strategic zones;

(b) Mafia armies. Private justice groups and hired killer organizations were used for illegal activities administrated by criminal organizations. These organizations were often used politically for selective killings and benefited from a certain degree of impunity;

(c) Groups of soldiers or individuals changing bands with a view to personal profits. Members of institutional bodies became members of paramilitary groups, former guerrilla members joined counterinsurgency groups, etc.;

(d) Joining up for the money. In many cases former paramilitaries or guerrilla militants declared that they had joined the conflict because they earned more than they would have as farmers.

93. The expert added that one of the main reasons for the existence of mercenaries was precisely the weakness of the State. He explained that a State that was not able to control its borders and had lost the monopoly of force led to de facto division of the territory among different actors such as drug traffickers, guerrillas, paramilitary groups, oil companies with private armies, and others. In the Colombian case, the State had delegated the counter-insurgency to private actors, creating what he called the "privatization of the war" that facilitated the entry of mercenaries in the conflict.

94. Another expert said that there had been internal conflicts in Africa for a long time but during the cold war attention was given predominantly to external conflicts. Many of the internal conflicts grew after the world Powers stopped providing the assistance and investment they had provided during the cold war. States were forced to take huge loans from the international banking system and in places where military regimes were in power, the vacuum that was created was filled by private military companies, many of them made up of mercenaries.

95. The expert added that a new form of mercenarism was the large number of African mercenaries used for commercial purposes.

96. Responding to questions, the expert stated that many of the private security companies that provided praetorian guards to State dignitaries in Africa were in fact involved in mercenary activities. He emphasized the need to look into the motivation that drove people to become engaged in this type of activity, and to see what international instruments or mechanism could be used against those who committed human rights violations.

97. The expert described the phenomenon of "corporate colonization": in some cases States had lost control of the exploitation of its natural resources and its monopoly on the use of force to private companies with very complex business interests and which used mercenaries to maintain their status and power.

98. Another participant commented that there was a need to make a clear distinction between mercenaries and other situations involving groups of violent individuals who were not mercenaries. As an example, he said that paramilitaries were a result of privatization of the army, charged with tasks that States could not otherwise accomplish legitimately.

99. One expert added that in some cases, there was a clear link between mercenaries and State terrorism, and the only way to end that evil was with the will of States.

100. At the end of the five-day meeting, the experts reached the following conclusions and recommendations.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

101. During the cold war, mercenary activities related to the process of decolonization were largely located in Africa. Since the cold war, the phenomenon has not disappeared. It has instead become more extensive and diversified. It occurs in armed conflicts affecting self-determination. Given the characteristics of the new types of war, in which the ideological objectives are minimized or eclipsed, strategies, scenarios and economies of war are changing. That is the reason why it is now very difficult to make the distinction between wars of liberation, acts committed by organized crime, illegitimate paramilitary action, terrorism, acts of violence motivated by private interests and human rights violations committed by governmental agents.

102. In this connection, mercenary activities are used to destabilize legitimate Governments or to control natural resources of great economic or strategic value. In all these situations, mercenarism is the cause of serious damage to the enjoyment of human rights, and contributes to the commission of crimes against humanity and violations of international humanitarian law. In most of the cases analysed, responsibility was not established and the responsible persons enjoy absolute impunity.

103. Among the types of mercenary activities are the traditional ones, including direct hiring of individuals with military expertise for use in armed conflicts or in criminal activities in the interest of the parties who have hired them. Another type of activity involving mercenaries is terrorist acts, illegal arms and drug trafficking. Lastly, there are the modern multipurpose security corporations which may include forms of military service provided by mercenaries.

104. The treatment by the United Nations of the question of mercenaries should take into account, on the one hand, the criminal responsibility of individuals who sell their military services in the knowledge that they will be carrying out criminal acts of mercenarism; on the other, there should be criminal responsibility of those recruiting, training, financing, planning and deploying mercenaries when those acts lead to breaches of international humanitarian law and criminally violate the human rights of individuals and peoples.

105. The continued existence and diversification of mercenary activities require an appropriate legal framework. There are no effective punitive norms for "old" mercenary activities and new forms of mercenary activities fall outside existing frameworks. Few national laws make new forms of mercenarism an offence and international law is still deficient in this respect.

106. In past years there has been a considerable increase in private security companies offering services in the military field. These companies have a modern structure and are characterized by their efficiency and the multipurpose nature of the services they offer, but there is an objection to their participation in internal conflicts through the mercenary units which make up private armies. These aspects, as well as others related to illegal arms and drug trafficking and human rights violations by mercenaries from these companies, have so far no adequate mechanisms for their control, prevention and monitoring.

107. The important role of the United Nations Special Rapporteur on the use of mercenaries in analysing, monitoring and reporting on all forms of mercenarism is recognized. However, it is felt that the resolution that supports the mandate does not adequately address new forms of mercenaries and their impact on human rights and humanitarian law. Owing to the interrelated nature of these crimes, there is a need for the Special Rapporteur to coordinate his/her activities with other United Nations agencies dealing with arms and drug trafficking, terrorism and organized crime.

108. It is recognized that the relationships between mercenaries and human rights has changed. New forms of mercenarism threaten not only the right to self determination - although this may be the case - but also affect and violate a wide range of human rights.

B. Recommendations

109. The group recommends that the United Nations reaffirm its condemnation of mercenary activity and associated crimes, whether by States, organizations, groups or individuals. The group also calls upon the United Nations to recognize that there are new kinds of mercenaries which require additional action and measures. The problem of mercenarism in all its forms affects the enjoyment of human rights, peace and security, and economic and social development.

110. The group recommends that a systematic and comprehensive review of the legal definition of mercenary should be considered as a matter of urgency and should include, inter alia, the elements of motive, purpose, payment, type of action and nationality. Particular attention should be given to the purpose for which a mercenary is hired. However, a distinction should be made between new forms of mercenaries and related crimes such as terrorism, arms trafficking and organized crime in which mercenaries might be involved.

111. The group urges the States Members of the United Nations to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and take the necessary measures to ensure its effective implementation. Consideration should be given to the establishment of a monitoring body for the Convention. In view of the gaps and loopholes in the Convention noted by the group, Member States should enact national legislation that gives effect to the principles of the Convention while remedying the noted inadequacies.

112. The group notes that mercenary activity in whatever form is associated with grave violations of human rights and international humanitarian law. To avoid a culture of impunity, Member States are called upon to introduce legislative measures which implement all relevant international human rights instruments and international humanitarian law under which all kinds of mercenaries may be prosecuted.

113. Although the Statute of the International Criminal Court does not refer to mercenaries, the group recommends that further consideration should be given to the extent to which mercenarism could be considered an aggravating circumstance in the event of liability for genocide, crimes against humanity and war crimes.

114. Private security and military companies should be considered in the context of freedom of association, freedom of movement, free enterprise, and corporate responsibility and liability. Their participation in the area of security is recognized, but this can also be the source of the same problems as are associated with traditional forms of mercenaries which they may well use. States are primarily responsible for maintaining public security and law and order and should not abdicate from these responsibilities, leaving them to private entities. The group recommends that States introduce specific laws and regulations to prohibit these companies from participating in armed conflicts, creating private armies, engaging in illicit arms trafficking, recruiting mercenaries, and being involved in the illegal extraction of natural resources.

115. The group recommends that all United Nations treaty monitoring bodies - in particular the Human Rights Committee and the Committee on Economic, Social and Cultural Rights - request from States parties information on all forms of mercenarism when examining their reports.

116. The group recommends that the discussions on the possible renewal of the mandate of the Special Rapporteur on the use of mercenaries at the fifty-seventh session of the Commission on Human Rights lead to its extension and the broadening of its remit to include private security and military companies and all other new forms of mercenarism and to more explicit reference to the human rights problems associated with their use.

117. The group recommends that the link between new kinds of mercenaries and arms transfers (including of strategic technologies) should be addressed at the forthcoming United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and that ways should be investigated to integrate such activities into arms export controls.

118. The group recommends that the continuing work of the United Nations with civil society should include the issue of all forms of mercenarism.

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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 2000/3

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Executive summary

The report begins with a description of the Special Rapporteur's activities during the year 2000 and the correspondence sent and received. Reference is made to the communications received from the Governments of Antigua and Barbuda, Cuba, Georgia, Madagascar, Pakistan and Venezuela in response to the Special Rapporteur's general request for information and cooperation on the part of non-governmental organizations (NGOs). In following up his official mission to Cuba in September 1999, the Special Rapporteur discusses the communications sent to the Governments of El Salvador, Guatemala, Panama and the United States of America as well as the replies received.

The report describes the development of mercenary activities in Africa from the time that mercenaries were used by the racist apartheid regime in South Africa up to and including recent armed conflicts in the continent and refers to the situation in Angola, the Democratic Republic of the Congo, Guinea-Bissau, the Republic of the Congo and Sierra Leone.

The Special Rapporteur then examines the differences between traditional and new forms of mercenary activities, the relationship between terrorism and mercenary activities, the problems raised in connection with respect for human rights and international humanitarian law by private security and military assistance companies operating internationally and the limits and shortcomings of the legal definition of mercenary activities. He also discusses the present position as regards accessions to and ratifications of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in 1989.

Introduction

1. At its fifth-sixth session, the Commission on Human Rights adopted resolution 2000/3 of 7 April 2000 in which, among other things, it decided to consider at its fifty-seventh session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Commission requested the Special Rapporteur to consult States, intergovernmental and non-governmental organizations in the implementation of the current resolution and to report, with specific recommendations, his findings on the use of mercenaries to undermine the right to self-determination to the Commission at its fifty-seventh session.

2. The Commission reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations. It recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market. Furthermore, it urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to impede the right to self-determination, to overthrow the Government of any State, or dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the right to self-determination of peoples.

3. The Commission invited States to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur, urged all States to cooperate fully with the Special Rapporteur in the fulfilment of his mandate and requested the United Nations High Commissioner for Human Rights to provide the Special Rapporteur with all the necessary assistance and support for the fulfilment of his mandate. It reiterated its request to the Office of the United Nations High Commissioner for Human Rights, as a matter of priority, to publicize the adverse effects of mercenary activities on the right of peoples to self-determination and, when requested and where necessary, to render advisory services to States that are affected by the activities of mercenaries.

4. The Commission reiterated the importance of a clearer legal definition of mercenaries that would make for more efficient prevention and punishment of mercenary activities and decided to convene a workshop on the traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Commission also called upon all States that had not yet done so to consider taking the necessary action to sign or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

5. In this regard, the Special Rapporteur wishes to report that he is continuing to analyse traditional and new forms of mercenary activities with a view to submitting proposals to the Commission on a clearer legal definition of mercenaries. He would add that the expert seminar convened by the Commission is being organized as this report is being drawn up, and is

scheduled to meet from 29 January to 2 February 2001. This seminar, as well as another to be held towards the end of the year, will examine international legislation and the current situation in this area in an effort to deal with new types of mercenary activities.

6. On 26 October 2000 the Third Committee of the General Assembly adopted resolution 55/86 entitled "Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination". In this resolution, the General Assembly requested the Special Rapporteur to report his findings on the use of mercenaries to undermine the right of peoples to self-determination, with specific recommendations, at its fifty-sixth session. The General Assembly, among other things, welcomed the adoption by some States of national legislation that restricted the recruitment, assembly, financing, training and transit of mercenaries, as well as the cooperation extended by those countries that had received visits from the Special Rapporteur.

7. In the light of the above, and pursuant to the provisions of resolution 2000/3, the Special Rapporteur has the honour to submit this report to the Commission on Human Rights for consideration at its fifty-seventh session.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

8. The Special Rapporteur submitted his previous report (E/CN.4/2000/14 and Corr.1) to the Commission on Human Rights on 22 March 2000. While in Geneva, the Special Rapporteur held consultations with representatives of various States and met with members of NGOs. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

9. The Special Rapporteur returned to Geneva on three occasions, from 5 to 9 June, from 21 to 22 August and from 4 to 7 December 2000, to hold various consultations, take part in the seventh meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights and to draft his reports to the General Assembly and the Commission. During his stay in Geneva, the Special Rapporteur held consultations on the preparation and publication of the pamphlet on the negative impact of the use of mercenaries on the exercise of the right of peoples to self-determination which the Office of the High Commissioner had been asked to prepare and which it should publish in the near future. He also held consultations on the preparation of the expert seminars that the Office had scheduled for 2001 on traditional and new forms of mercenary activities as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

10. The Special Rapporteur submitted his report (A/55/334) to the General Assembly on 18 October 2000. During his stay in New York he met with various permanent representatives to the United Nations and members of NGOs having their head offices in the United States.

11. The Special Rapporteur was obliged to postpone to 2001 his visit to the Centre for International Crime Prevention (CICP) of the Office for Drug Control and Crime Prevention (ODCCP) in Vienna. At that time the Special Rapporteur hopes to be able to discuss with CICP officials possible forms of cooperation under his mandate and receive information on the United Nations Convention against Transnational Organized Crime as well as on CICP's activities to combat transnational organized crime, illicit traffic in persons and in arms and corruption.

B. Correspondence

12. Pursuant to General Assembly resolution 54/151 and Commission resolution 2000/3, the Special Rapporteur sent a communication on 16 June 2000 to all States Members of the United Nations, requesting: (a) information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries); (b) information on the possible participation by nationals of their country as mercenaries in the commission of acts against the sovereignty of other States or the self-determination of other peoples; (c) information on the existence of mercenary activities organized in the territory of another State against the requested State; (d) information on the possible participation of mercenaries in the commission of internationally wrongful acts, such as terrorist attacks, traffic in persons, drugs or weapons and formation of and support for death squads and paramilitary organizations; (e) information on domestic legislation in force and on treaties outlawing mercenary activities to which the State is a party; (f) suggestions by their Governments for enhancing the international treatment of the topic of outlawing mercenary activities; and, lastly, (g) information and views on private security service and military advice and training companies.

13. The replies to the questionnaire received from the Governments of Antigua and Barbuda, Cuba, Georgia and Pakistan have been included in the Special Rapporteur's report to the General Assembly (A/55/334, paras. 13-15 and 18) and contain particularly useful information and observations.

14. Subsequently, in a note verbale dated 27 October 2000, the Permanent Mission of Venezuela to the Office of the United Nations in Geneva transmitted the following reply to the questionnaire sent by the Special Rapporteur:

> "(a) We have no knowledge about any past or present mercenary activities in the country; (b) nothing is known about any participation by Venezuelans in the commission of acts against the sovereignty of other States; (c) nothing is known about any participation of mercenaries in committing wrongful acts in the country. In recent years, however abduction has become a source of concern, since subversive Colombian organizations as well as drug trafficking organizations are managing to establish contacts with underground groups in the country with a view to planning and arranging abductions as well as the theft of aircraft for transfer to Colombia to engage in drug trafficking operations."

15. The note verbale continues as follows:

> "(d) Venezuela is not a party to the International Convention on the question; (e) no information is available about the existence of companies that offer their services to Governments with a view to participating in international armed conflicts with the help of military professionals in order to improve the military efficiency of Government forces."

It goes on to say, among other things, that article 1, paragraph 2, of the most recent Constitution of the Bolivarian Republic of Venezuela, published in Official Gazette No. 36.860 of 30 December 1999 states that "Independence, liberty, sovereignty, immunity, territorial integrity and national self-determination are irrevocable rights of the nation", and it adds that this reference to national self-determination as an irrevocable right of the nation implies the right of the sovereign people to determine its own political organization and its independence.

16. Venezuela's Permanent Mission also states that, according to article 152 of the Constitution of the Bolivarian Republic of Venezuela, the country's international relations "are governed by the principles of independence, equality between States, self-determination and non-intervention in internal affairs, the peaceful solution of international disputes, cooperation, respect for human rights and solidarity between peoples in the struggle for their emancipation and the welfare of humanity".

17. The Permanent Mission of the Republic of Madagascar to the Office of the United Nations in Geneva, in a note verbale dated 29 November 2000, stated the following:

> "(a) The Ministry of the Armed Forces has no recent information about the recruitment, financing, training and use of mercenaries at the international level; (b) no person of Malagasy nationality has so far been declared to be a mercenary or a participant in mercenary activities in other States; (c) the Ministry of the Armed Forces has received no information about mercenary activities likely to affect national sovereignty or the exercise of human rights; (d) the statute governing Malagasy servicemen prohibits members of the Malagasy armed forces from leaving the national territory without the express authorization of superior authorities."

18. The Special Rapporteur also wrote to the Governments of the Islamic State of Afghanistan and the Russian Federation in letters dated 8 June 2000, requesting official information on the presence of foreign combatants and possibly of mercenaries in Afghan territory controlled by the Taliban and in Chechnya respectively. No response has been received to these communications. Non-government sources continue to inform the Special Rapporteur about the existence in Afghan territory of centres for training in the use of arms and explosives which allegedly cater to foreigners recruited mainly in certain Islamic countries. After receiving training, these persons are reportedly sent to fight in the north of Afghanistan.

19. The Special Rapporteur acknowledges with thanks the communications he received from the Governments of Madagascar and Venezuela and is grateful to the Governments which sent the communications that have been included in his report to the General Assembly. He also expresses appreciation for the cooperation of the NGOs Amnesty International (United Kingdom Branch), Human Rights Watch and International Alert. He is also grateful for the

communications received from the Bahrain Human Rights Organization, Copenhagen; the Centre for Conflict Resolution, Capetown; the International Service for Human Rights, Geneva; the Muttahida Quami Movement (MQM), London; the Royal Institute of International Affairs (Chatham House), London, and the Organization for Defending Victims of Violence, Tehran.

C. Correspondence relating to mercenary activities against Cuba

20. Following up on his official mission to the Republic of Cuba in September 1999, the Special Rapporteur transmitted the following letters:

(a) Letter dated 16 June 2000 addressed to Mr. Gabriel Orellana Rojas, Minister for Foreign Affairs of Guatemala, requesting official information on the allegations concerning the use of Guatemalan territory for planning a number of attacks against tourist facilities in Havana and for the recruitment and training of several of the perpetrators of the attacks. It may be recalled that Francisco Antonio Chávez Abarca, alias Manuel González, one of the presumed masterminds, is alleged to have recruited Raúl Ernesto Cruz León and three Guatemalan citizens, Nader Kamal Musallam Baracat, María Elena González Meza de Fernández and Jazid Iván Fernández Mendoza;

(b) Letter dated 16 June 2000 addressed to Mrs. María Eugenia Brizuela de Ávila, Minister for Foreign Affairs of El Salvador, requesting official information on the use of the territory of El Salvador for the planning of a number of attacks against tourist facilities in Havana and for the recruitment and training of some of the perpetrators of the attacks. As stated in the report of the Special Rapporteur to the Commission, Luis Posada Carriles, alias Ignacio Medina, is alleged to have recruited Otto Renée Rodríguez Llerena, a citizen of El Salvador;

(c) Letter dated 6 July 2000 addressed to Ms. Madeleine Korbel Albright, Secretary of State of the United States of America, requesting official information on a number of organizations of Cuban origin formed and operating in Miami (Florida), with which several of the masterminds of the attacks against the tourist facilities in Havana are alleged to be linked. Information is requested specifically about any investigations that might have been conducted into the participation of members of these organizations in the recruitment, hiring, financing and use of mercenaries to carry out acts of sabotage and terrorism in Cuba.

21. The replies received from the Governments of El Salvador and the United States of America are set out in paragraphs 20, 21 and 22, respectively, of the Special Rapporteur's report to the General Assembly (A/55/334). On 7 December 2000, the Special Rapporteur once again wrote to the Secretary of State of the United States of America, expressing thanks for her previous reply dated 4 August 2000 and requesting any additional information uncovered by the investigation conducted by the Federal Bureau of Investigation (FBI).

22. On the same date he also wrote to the Minister for Foreign Affairs of Panama concerning the detention in that country of Luis Posada Carriles, one of the alleged masterminds behind the bomb attacks against tourist facilities in Havana. Posada Carriles entered Panama on 5 November 2000 under the name of Francisco Rodríguez Mena and a false Salvadoran

passport. He was detained, together with three other persons, on 17 November 2000 on suspicion of being involved in a plan to assassinate the President of Cuba. It is said that during his detention he confessed to participating in the attacks committed in Cuba during 1997.

23. In this connection, the Special Rapporteur reiterates the position he adopted in his previous report to the Commission and in his recent report to the General Assembly, namely, that the commission of terrorist attacks against tourist facilities in Cuba during 1997 as well as the fact that those who planned the attacks and those who carried them out were mercenaries had been proved. These acts are therefore of a criminal nature and there should be no question of impunity. It is accordingly hoped that impartial international cooperation will throw light on the conspiratorial networks which consider that their disagreements with the Government of Cuba authorize them to commit criminal acts. Impunity, in this context, cannot be countenanced.

II. MERCENARY ACTIVITIES IN AFRICA

A. General

24. The right of the African peoples to self-determination and the stability of their legitimate Governments have constituted a basic theme for the Special Rapporteur. The creation of his Office in 1987 to a great extent reflected the desire to contribute to the effective exercise of this right by the African peoples. It therefore also explains why an important aspect of his work is to follow closely the situation in African countries affected by armed conflicts or mercenary activities.

25. In some quarters it is held that, as the cold war is over and the apartheid regime in South Africa has come to an end and as the self-determination of the African peoples is no longer at risk, the Commission and in particular the Office of Special Rapporteur need no longer concern themselves with this matter. The Special Rapporteur challenges this interpretation. The end of the cold war admittedly put an end to one type of confrontation and antagonistic interests in a bipolar world. Apartheid endangered the exercise of self-determination by peoples who had recently achieved independence, such as the Angolan, Mozambican and Namibian peoples, to cite only three examples. Yet it is impossible to overlook the fact that serious situations are being created by the debilitation of States, deep-seated crises affecting governmental stability in countries of the African continent and behind-the-scenes struggles for the control of rich natural resources and oil and mineral deposits.

26. The long series of armed conflicts in Africa inevitably involving mercenaries organized in various ways offers harsh and brutal proof of the fact that the real and effective exercise of the right of many African peoples to self-determination has not been realized. Others would disagree and, viewing Africa from the standpoint of humanitarian assistance, simply refuse to face the fact that it is a continent that is still fighting for its right to self-determination and development.

27. In his initial reports, the Special Rapporteur noted that the use of mercenaries to impede the exercise of the right to self-determination could also affect non-African peoples. The use of mercenaries organized from third countries constitutes a criminal act that may have implications for several peoples. This prompted the Special Rapporteur to reinterpret his mandate in a way

that was subsequently approved by the Commission and enabled him to analyse cases and situations in which mercenaries were used outside the context of the cold war and the racist apartheid regime. Moreover, the various forms of mercenary activities and the extension of their scope revealed that they constituted a serious problem from the standpoint of the effective enjoyment of human rights. In his reports to the Commission and the General Assembly the Special Rapporteur continued to deal with the involvement of mercenaries in armed conflicts in Africa after the end of apartheid, although he also began to study the presence of mercenaries in other parts of the world.

28. Specifically, in the case of Africa, the Special Rapporteur's initial reports dealt with various aspects of the involvement of mercenaries in the conflicts taking place in Angola, Chad, Liberia, Mozambique, Namibia, Rwanda, Somalia, Sudan and, later on, in Zaire, Zambia and Zimbabwe. The Special Rapporteur also looked into the political instability - almost invariably accompanied by armed violence - experienced by Benin, Botswana, Burundi, Cameroon, the Comoros, Djibouti, Lesotho, Niger and Togo. He also studied the use of mercenaries by the racist regime of South Africa in making attempts on the lives of the leaders of the African National Congress (ANC) - one example being the assassination of Chris Hani by a Polish mercenary in April 1993 - or to destabilize political regimes which were regarded as unfriendly or smacking of a certain type of socialism.

29. The democratization of South Africa and the dismantling of the racist regime were not followed by a period of peace in the continent. On the contrary, savage armed conflicts broke out in various countries as well as a sort of continental-wide civil war which is raging in the heart of the region. The Special Rapporteur was able to confirm the involvement of mercenaries in these conflicts, some of which were brought to an end by cease-fire and peace agreements that proved to be relatively firm or lasting. Others, such as the one in Angola, continued however, and reveal the continuing involvement of mercenaries and arms traffickers, whose only thought is material gain.

30. Thus, bearing in mind that the dialectic of specific conflicts differs from one situation to another, the Special Rapporteur has consistently proposed that the Commission should adopt an overall policy designed to protect the lives, personal integrity, freedom and security of persons and ensure respect for the sovereignty of the African States and the right of their peoples freely to determine their future.

B. Angola

31. The internal armed conflict in Angola is the oldest of the African conflicts and the cause of the country's grinding poverty, despite its natural resources. It has also resulted in the death of over 500,000 Angolans and the internal displacement of at least 1 million, and the majority of the population are managing to survive only on humanitarian assistance amounting to $3 a day. In recent months landmines have caused over 50 deaths and hundreds of persons have been injured and mutilated. The main responsibility for this disaster lies with the União Nacional para a Independência Total de Angola (UNITA) which ignored the peace agreements signed in Lusaka (S/22609, annex) as a result of intensive negotiations and unilaterally resumed armed hostilities against the Government, rearming and forcibly recruiting adolescents and children. It violated the arms embargo imposed by the United Nations Security Council on

15 September 1993 (resolution 864 (1993)) and engaged in illegal barter operations, exchanging weapons for diamonds extracted in zones under its control, and especially in the north-eastern part of the country.

32. According to recent information, UNITA is paying with diamonds for the weapons which it acquires in eastern Europe and which allegedly transit through Togo. According to the same information, it is also illegally exporting diamonds extracted from mines in the northern part of the country to Belgium and purchasing weapons in Bulgaria with the proceeds. It is estimated that this illegal traffic in diamonds has provided UNITA with between US$ 3 and 4 billion, thus enabling it to strengthen its armed units and enhance its military capacity by hiring mercenaries. There are obvious flaws in the system used by the United Nations to monitor the sanctions imposed on UNITA and they must be made good. Meanwhile, the armed conflict is continuing and peace has not been achieved in Angola.

C. Sierra Leone

33. The situation is just as serious in Sierra Leone where a flawed peace agreement signed in Lomé on 7 July 1999 between the legitimate Government of President Ahmed Tejan Kabbah and the Frente Revolucionario Unido (RUF) comprised an illegal amnesty for those who had committed war crimes, crimes against humanity and acts of genocide. Even though they benefited from this illegal amnesty, RUF combatants remained under arms and continued to engage in terrorist acts, pillaging and banditry, gaining strength in certain diamond-producing areas and managing to attack the capital in May 2000. Mercenaries were also present, selling weapons and trafficking in diamonds.

34. Diamonds constitute a focal point of the conflict in Sierra Leone and mercenaries are participating in this illegal traffic. Recently, on 5 August 2000, a mercenary of Ukrainian nationality and resident in Liberia was detained in Cinisello Balsarno (Italy) and large amounts of diamonds, cocaine and weapons were found in his possession.

35. Control of the diamond mines continues to be a source of the financing of RUF activities which include the most heinous crimes committed on a mass scale and in a systematic manner during recent years in the world. The international community cannot remain indifferent to these violations of the most elementary human rights and should look into the matter of the possible complicity, by commission or omission, of those who commit such crimes. This illicit traffic in weapons and diamonds, as well as the involvement of mercenaries in such trafficking, should be carefully investigated and curbed.

36. In connection with this point, it may be noted that six major NGOs, namely, International Action against Hunger, INTERMON, Médicus Mundi Internacionalis, Médecins sans frontières and Doctors of the World, have approached the European Union and requested that the traffic in oil and diamonds should be strictly controlled. They called for the imposition of sanctions against Governments, organizations and companies which, for financial reasons, participate in this illegal trafficking as well as in illegal or shady trading in these products, thereby contributing to the continuation of armed conflicts and their attendant violations of human rights. Another NGO, namely, Partnership Africa Canada (PAC), has condemned the attitude of diamond-producing companies in respect of Sierra Leone.

37. One result of the recent visit by the United Nations Secretary-General to Sierra Leone in December 2000 was the condemnation in no uncertain terms of the illicit traffic in weapons and diamonds. Mr. Robin Cook, the Minister of Foreign Affairs of the United Kingdom, has stated that the illegal trade in diamonds had kept the conflict in Sierra Leone alive and enabled RUF to acquire large amounts of weapons. He came out in favour of setting up a government system for verifying and monitoring Sierra Leone diamonds entering the market.

38. According to the World Federation of Diamond Bourses (WFDB) and the International Diamond Manufacturers Association (IDMA), uncut diamonds of illegal origin account for only 4 per cent of the world diamond trade (US$ 7 billion in value terms). However, it must be assumed that, owing to the lack of adequate control, this percentage and amount are grossly underestimated. In any event, new methods of control are being introduced and it is to be hoped that they will yield better results than existing methods.

39. The traffic in diamonds in Africa is connected with another illegal trafficking operation that generates thousands of millions of dollars, namely, arms trafficking. Mercenaries participate in both types of traffic, acting as pilots of aircraft and helicopters, training makeshift troops in the use of weapons and transferring freight from place to place.

D. Republic of the Congo

40. The situation in the Republic of the Congo is beginning to show some signs of hope after more than three years of armed conflict. Three such signs are the peace agreement of 29 December 1999, acceptance of the mediation offered by the President of Gabon, Mr. Omar Bongo, and the opening of a national dialogue between the government party and 16 opposition parties, most of whose leaders are still in exile. The Government of President Denis Sassou Nguesso has ordered the demobilization and dissolution of the militias. The Special Rapporteur expresses his good wishes for the success of this national dialogue and the hope that, in a context of reconciliation, all isolated militia activities will cease and an impartial investigation can be made of all reports of human rights violations during the conflict.

E. Democratic Republic of the Congo

41. The armed conflict in the Democratic Republic of the Congo is continuing despite a number of attempts to negotiate peace and despite the ceasefire agreement of 10 July 1999 (S/1999/815, annex). The struggle is continuing in various parts of the country, mainly in the regions of North and South Kivu and in the south-eastern region. A meeting convened on 13 August 2000 in Lusaka in support of the ceasefire resulted in failure. Armies opposing the Government of President Laurent Désiré Kabila, such as the Congolese Rally for Democracy (RCD) and the Movement for the Liberation of Congo (MLC), are supported by troops from Angola, Namibia and Zimbabwe.

42. In this connection, the presence of mercenary combatants recruited by military security companies has been reported. The primary interest of the mercenaries continues to be focused on the Mbuji-Mayi region, the diamond capital of the province of West Kasai. According to information received by the Special Rapporteur military security companies and air cargo companies registered in the State of Nevada (United States of America), in the Channel Islands

and especially in the province of Gauteng (South Africa) and in Zimbabwe are engaged in the transport of troops, arms, munitions and diamonds. It is also reported that some of these companies participated in aerial bombardment operations. For this purpose they use Ukrainian mercenaries, pilots and air crews, among others, MIG-21 jet fighters, An-26 and An-12 Antonov transport planes and Mil Mi-24 helicopter gunships. Recently an An-12 belonging to one of these companies and loaded with explosives crashed on take-off.

F. Guinea-Bissau

43. According to information received by the Special Rapporteur, during the last week of November 2000, several dozen members of the self-styled Senegalese separatist organization Mouvement des Forces Democratiques de Casemance (MFDC) were detained in Guinea-Bissau and accused of having participated in armed actions in this country. On 24 November 2000, street fighting took place between the forces of General Ansumane Mane and the government troops of President Kumba Yala. On the basis of this information, the Special Rapporteur, in a letter dated 7 December 2000, requested the Minister for Foreign Affairs and the Communities of Guinea-Bissau for official information concerning the participation of foreigners in these incidents.

III. PRESENT SITUATION AS REGARDS MERCENARY ACTIVITIES

A. Traditional forms

44. According to certain views, mercenaries do not constitute a major danger for the enjoyment of human rights. However, a glance at the present pattern of armed conflicts, whether internal or international, and the fact that mercenaries are involved in most of them would seem to confirm the opinion held by the Office of the Special Rapporteur, namely, that mercenary activities are continuing in many parts of the world and that the presence of mercenaries is still connected with situations that affect the self-determination of peoples as well as peace, political stability, life, physical integrity, freedom and security. Mercenary activities also continue to affect the enjoyment of the human rights of peoples exposed to them.

45. At the same time there is no denying the fact that at the present time mercenary activities not only constitute an obstacle to the exercise of the right to self-determination but that they have assumed new forms and aspects which had not existed in the past. Although some of these new forms may well sport legal façades, those behind them are still mercenaries and they continue to be of an illegal nature. Confronted by these new forms, the Office of the Special Rapporteur adopted the following approach: (a) interpretation of his mandate as covering any type of mercenary activity that constituted a means of violating human rights or impeding the exercise of the right to self-determination; (b) allocation of time to the study and analysis of the new ways and forms in which mercenaries are being used; and (c) demonstrating that, regardless of its form or nature, mercenary activity in itself was unlawful and illegal and constituted a violation of the human rights of the peoples affected by it.

46. With a view to studying the use of mercenaries in the armed conflicts that affected the African States during the 1980s and in the context created by the interventionism of the apartheid regime that prevailed in South Africa, the Special Rapporteur decided to regard as mercenaries

all persons of a nationality other than that of the parties to the conflict, thereby rendering applicable article 47 of Protocol Additional I of 1997 to the Geneva Conventions of 1949. This is the article that specifies the characteristics of a mercenary and states that mercenaries may not enjoy the status of prisoners of war.

47. For the purpose of applying the provisions of article 47, the Special Rapporteur first noted the existence of organizations that recruited people to fight in an armed conflict. For example, specialized publications such as *Soldiers of Fortune* or *Cover Action* contain advertisements seeking former soldiers and persons with military training prepared to be sent to various war zones. These persons, after receiving training of an ad hoc nature, participated in hostilities, fighting for one of the parties to the conflict which paid them substantially more than combatants of similar ranks and functions in the armed forces of that party. Furthermore, they were not persons sent on official duty by a State that was not a party to the conflict. They were therefore mercenaries according to the definition given in article 47 of Protocol Additional I.

48. Conflicts such as those that occurred in the African countries, between Armenia and Azerbaijan for the region of Nagorny Karabakh, in Georgia, in Nicaragua, in the Republic of Moldova for the Dniester region or in Tajikistan attracted military personnel fitting the description given above, and they were therefore regarded as mercenaries. An important point is that under this traditional form of mercenary activities, in Angola, in the Comoros or Mozambique, mercenaries usually fought for the party that was trying to impede a people's exercise of its right to self-determination. This was also true of the mercenaries members of the Buffalo battalion and other military units that the South African racist regime sent to Angola to strengthen UNITA.

49. It may well be asked whether the extension and variation of the forms of mercenary activities has brought about the disappearance of this traditional form connected with violations of a people's exercise of its right to self-determination. The reply is certainly no. Various armed conflicts that have taken place in recent years, such as those in the territory of the former Yugoslavia, still reveal the involvement of mercenaries operating in traditional ways. Mercenaries of the traditional kind are still behind the extension of mercenary activities. Demand for persons of this type, because of their experience and presumed military prowess in combat, has kept up during recent armed conflicts. Yet at the same time new kinds of mercenaries have made their appearance, and since they do not exactly match the definition given in article 47 of Protocol Additional I, the definition itself should be re-examined. The point being made by the Special Rapporteur's office is that they are indeed mercenaries and that customary legal definitions suffer from shortcomings and limitations and fail to cover situations and activities which are of a mercenary nature.

B. Terrorism and mercenaries

50. The new ways in which mercenaries are being used reveal that at the present time they are being recruited not only to take part in armed conflicts but also to participate actively in other activities which are generally characterized by extreme violence, hatred and intolerance. The use of mercenaries in this context reflects an attempt to transfer the confrontation to the home ground of the adversary, thereby endeavouring to do him material harm and creating situations conducive to terrorism or participating in undercover operations. Mercenaries now participate in

trafficking in persons, drugs and weapons, in the commission of terrorist acts and the settling of criminal scores, as well as in organized crime such as the large-scale theft of vehicles which are then sent to African or eastern European countries. There is a demand for mercenaries to engage in such illegal acts and they are sought after because of their military know-how or weapons expertise.

51. Terrorist acts are an integral part of the violence that is designed to intimidate the population as a whole and to create a feeling of indiscriminate terror from which there is no escape regardless of their status or social or professional position. These acts are usually carried out by political militants or extremists devoid of all morality who have turned their backs on their religious, ideological or political beliefs. Mercenaries, on the other hand, are recruited to carry out operations on a larger scale or when the objective is to cause greater destruction. They are usually sought after because of their experience with the use of weapons and explosives or when it is desired to achieve "professional" efficiency in perpetrating a terrorist attack.

52. Such persons are terrorists because of the nature of the criminal act carried out, but mercenaries by virtue of their function. Specialization in the commission of crimes and the payment received are characteristic features of a large number of terrorist acts carried out during the past 30 or 40 years. For example, Illich Ramírez Sanchez, known as "Camarada Carlos", who was captured in 1994 and is at present being tried in France, has admitted that he participated in 83 assassinations, in blowing up an Air France plane in Entebbe and in the attack against OPEC ministers in 1975. He carried out these criminal and terrorist acts on the orders of organizations and States and was paid for doing so. They were carried out not for ideological reasons, because he belonged to a certain group or because of an intolerant religious attitude, but because of the money involved. These terrorist acts were those of a mercenary.

53. The attacks against the United States embassy in Beirut in 1983, against the embassy of that country and that of France in Kuwait during the same year, against the annex of the United States embassy in Beirut in 1984 and against Israel's embassy in Argentina in 1992, as well as the hijacking of Kuwait Airways aircraft in 1984 and 1988 were the work of mercenaries who were specially recruited, hired and paid to carry it out.

54. The terrorist attacks in Colombia, where an Avianca plane was blown up in the air, in Egypt, in France and in Yemen, as well as in many other countries, make it possible to make a distinction between extremists who plan terrorist acts and those who carry them out. Some were militants but others were professionals employed as mercenaries who had nothing to do with the cause in question and whose involvement in the attacks was designed to ensure their destructive efficiency. Such terrorists, working for money, are also mercenaries.

55. During his official mission to South Africa in October 1997, the Special Rapporteur pointed out that failure to sanction mercenary organizations and racist groups of the extreme right might well open the way for future terrorist attacks, and he now notes with concern that, during 2000, 21 explosive devices were set off in Cape Town, as a result of which 3 persons were killed and 130 injured. It is said that the extremist Qibla and People Against Gangsterism and Drugs (PAGAD) organizations were behind these attacks. Yet who were the actual perpetrators? Who conceived and planned these attacks? And who financed them?

56. A terrorist attack can take place in no matter what circumstances and anywhere, and not necessarily in the context of an armed conflict. However, the terrorist nature of a criminal act should not in itself exclude the possibility that it may also involve mercenary activities if it is carried out by a mercenary. The mercenary is nothing but a professional criminal. He may have specialized in blowing up aircraft, mining ports, placing car bombs and destroying buildings and be paid for doing so, regardless of the criminal consequences of his acts and the damage caused.

57. For this reason it may be said that a mercenary is not usually a scrupulous person who has second thoughts about becoming involved in a terrorist act. In the same way as he participates in armed conflicts because of his military experience and because he gets paid to do so, he is also prepared to participate in terrorist attacks if the money is right. His idea is to make use of his military prowess and sell his experience in handling explosives, carrying out commando operations and piloting aircraft or helicopters. He is not deterred by the thought of assassination, abduction or the taking of hostages. The mercenary is not an ideological extremist but he can act as a terrorist and engage in acts wreaking death and destruction if paid to do so.

58. Terrorism is at present one of the worst scourges of humanity. The terrorist shares with the mercenary a disregard for life and his efficiency in killing and destroying. Although he experiences neither the hatred nor the emotional exultation that motivates the terrorist, nothing stops him from carrying out terrorist acts if he is paid to do so. The possible involvement of mercenaries should not be dismissed in investigations of terrorist acts.

C. Criminal associations

59. Generally speaking, mercenarism is a criminal association between the person writing the contract and the one performing it who, in return for payment, agrees to participate in an armed conflict or the commission of a criminal act. The mercenary sells the expertise he has acquired and undertakes to bring about the damage desired by the person by whom he has been contracted. Any investigation conducted to determine whether the act was committed by a mercenary should therefore make a distinction between these elements as well as others based on information concerning the recruitment, hiring and training of the mercenary. Recruitment procedures, paramilitary training organizations, the use of newspaper advertisements, training centres and covert operations should all be looked into. The simultaneous use of different nationalities and passports as well as false identity documents may well provide information on the mercenary status of the person concerned. However, determination of actual mercenary status implies an analysis of the relationship between the mercenary and the person who recruited, trained and paid him. Generally speaking, indications and clues that reveal the existence of an unlawful association with intent to engage in combat or commit offences should be sought.

60. The many forms of criminal associations involving mercenaries include illicit arms trafficking, which constitutes one of the illegal activities that causes the greatest harm to mankind. Many armed conflicts occur because they have been provoked by arms merchants and others are unnecessarily prolonged by them. The investigations conducted by various United Nations bodies indicate that arms trafficking is the most widespread form of illegal operation. In the Special Rapporteur's view, the mercenary component is usually present in

illicit arms traffic operations. Mercenaries are hired as pilots, co-pilots or flight engineers for the transport of weapons, as arms salesmen in the field or as instructors in the use of the weapons and military material that have been sold, and to train troops or paramilitary groups, which in many cases comprise raw recruits, persons with little training or knowledge or ad hoc combatants.

61. The illegal arms traffic is based on payment in cash but also in kind, and recent conflicts reveal that the weapons acquired illegally are paid for with diamonds and other precious stones or with oil or drugs. This is clear from the armed conflicts in Afghanistan, Angola, Colombia and Sierra Leone. Mercenaries are involved in illegal arms trafficking which destroys peoples and hampers development and peace. The international community is not adequately protected against this scourge, which is of surprising proportions, because it has failed to develop analytical criteria and standards that can be used to monitor these activities effectively.

D. Private security and military assistance companies operating internationally

62. The Special Rapporteur has, in his previous reports, referred to the recruitment, hiring and use of mercenaries by private companies offering military security services on the international market. This trend is of recent origin and some of these companies are involved in armed conflicts and provide training to combat forces or pilots for troop transport and offer specialized technical services; on occasion they participate actively in combat situations.

63. In point of fact the private sector has traditionally contributed to the development of military science and technology and its contribution has been particularly useful in the areas of basic and applied research, technological innovation, development of new strategies and advisory and project evaluation services. However, what is held against these companies is that they enter into contracts to recruit, hire and use mercenaries and become involved in armed conflicts to such an extent that they supplant the State and its armed security forces.

64. In this respect, it is worth emphasizing what is stated in paragraph 44 of the Special Rapporteur's report to the General Assembly (A/55/334), namely, that while private companies play an important role in the area of security, there are certain limits that should not be exceeded. They should not participate actively in armed conflicts, nor recruit and hire mercenaries, much less attempt to replace the State in defending national sovereignty, preserving the right of self-determination, protecting external borders or maintaining public order.

65. Similarly, the Special Rapporteur believes that the apparent connection between an increase in mercenary activity and the well-known inadequacy of international rules in that area should be examined. Moreover, the trend towards concealing mercenarism behind modern private companies could be due to the failure of international law to predict the new operational modalities for mercenary activities. The system of international norms must be perfected to counter the development of new criminal methods. At the same time, greater rigour and precision must be achieved in concepts and definitions, avoiding generalizations and ensuring clear legal regulations; private activity in the area of security and military advice and assistance should be monitored by a specialized public international institution.

66. Examples can be found on the contemporary international scene of States debilitated by long-term armed internal conflict and of Governments that have serious difficulties in ensuring the maintenance of public order or in guaranteeing the security of their citizens. No matter how serious the situation they face, these States cannot transfer their responsibility for public order, security and protection to private entities. The international community cannot allow either the formation of private armies or the privatization of war. By definition, private companies seek the greatest possible profit and their interests are very different from those of the State. Instead, the international community should offer support and cooperation to enable States to form professional armies and security forces trained in both technical areas and in respect for the rules of international humanitarian law and human rights.

67. Consequently, clear legal norms are required which specify the areas in which private military and security companies can legitimately operate and those in which their intervention should be prohibited. Such regulations should be established at the national, regional and international levels. Domestic legislation should take into account the particular situation of each country and respect the principle of the free market and free enterprise. It should also respect above all the principles of State sovereignty, self-determination of peoples and non-intervention in the internal affairs of States.

68. The Special Rapporteur proposes that the activities of military and security companies should be regulated, limiting their activities in this field to areas that are not inherent to the very existence of States, while not actually prohibiting the existence of such companies. Any law or regulatory mechanism must prohibit the hiring and formation of armed units composed of mercenaries.

69. At the same time, and in addition to regulations at the national level, the international community should attempt to strengthen regional security mechanisms. Such arrangements are preferable because they are regulated by clear legal provisions, act in accordance with a transparent line of command and are fully responsible for any violations of international humanitarian law or human rights. They are also familiar with the territory and the peoples where they operate. It is possible that the interests of private companies, which are motivated primarily by profit, could run counter to peace and democracy and could more likely be oriented towards the perpetuation and even escalation of conflicts.

70. There is therefore no question of prohibiting what the private company may do in respect of security arrangements but rather of establishing clear and precise limits for its activities - the most important point being to prohibit the formation of private armies. The privatization of war or the establishment of paramilitary groups made up of mercenaries will only mean leaving civilian populations without protection and with little or no chance for peace and democracy, hence opening the way to domination and discrimination.

E. Problems raised by a legal definition of mercenarism

71. The Special Rapporteur has repeatedly expressed concern about gaps in the legal definition of mercenarism and failure to condemn and curb this crime effectively. Both the Commission and the General Assembly have expressed and emphasized the same concern and

have requested Governments to submit proposals with a view to arriving at a clearer legal definition of mercenarism. It is in this context that meetings of experts are to be held during 2001 in order to study and update the international legislation in force and to formulate recommendations.

72. States Members in general subscribe to the view that mercenaries are to be condemned, particularly when they act against the self-determination of peoples, State sovereignty, peace and political stability. The communications received by the Special Rapporteur from various Governments confirm the view that "mercenarism" may be applicable to serious situations that affect the political stability of States and, at times, self-determination. The Special Rapporteur considers it significant that no State has attempted to justify mercenary activities, in any way in its replies to his communications or suggested criteria to distinguish between prohibited and permitted mercenaries or between legal and illegal mercenary activities, depending on the geopolitical interests at stake. While in the past the so-called undercover operations of some Powers involved the use of mercenaries, it would seem that their use is gradually being abandoned in the present context of globalization.

73. This consensus on the condemnation of mercenary activities of various kinds is a prime factor to be considered in efforts to update the legal definition. The Special Rapporteur has noted this same consensus with regard to the use of mercenaries by private companies that offer military security on the international market. The view that their activities should be regulated and monitored does not hold that such companies should be eliminated, nor that the State should have an exclusive monopoly in matters of security; it does affirm, however, that these companies should be prevented from becoming directly involved in armed conflicts and intervening in them by hiring and forming battalions of mercenaries to take part in warfare.

74. The currently accepted meaning or use of the term mercenary is primarily focused on including under this heading professional services that are paid to recruit soldiers to intervene in an armed conflict in a country other than their own. The concept thus appears to be linked, although not exclusively, to participation in armed conflicts and attacks against the self-determination of peoples. However the use of this type of professional services extends to other illicit activities, such as trafficking in persons, whether of migrants or women, arms and munitions trafficking, drug trafficking, terrorism, acts to destabilize legitimate Governments and acts to take forcible control of valuable natural resources, as well as organized crime such as abduction or the theft of vehicles on a large scale. None of these aspects falls strictly under article 47 of Protocol Additional I to the Geneva Conventions, nor is it applicable by extension. A revision of the legal definition of mercenaries should produce a concept that is broad enough to take into account the various types of crimes involving mercenary activity. This observation is also valid in respect of the 1989 International Convention which had not yet entered into force.

75. Mercenaries have usually been soldiers who have received military training, and above all are former members of special units or commando units or parachutists and have experience in the use of sophisticated weapons. This is in particular the case of those recruited to take part in combat and to train those who are to make up battalions, columns or commando units. The mere fact that it is a Government that recruits mercenaries or hires companies that recruit mercenaries, either in its own defence or to provide reinforcements in armed conflicts, does not

make such actions any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. This point should be taken into account in an broader legal definition of mercenaries.

76. The aim of the rules of customary international and treaty law is, in essence, to combat mercenary acts in the broad sense of the buying and selling of military services that are not subject to prevailing standards of international humanitarian law applying to armed conflicts and that are likely to lead to war crimes and human rights violations. If nationals of the affected country are used, they cannot, strictly speaking, be considered mercenaries, but on the part of those recruiting them the aim of using them as mercenaries is objectively undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries. Therefore, the requirement to be a non-national of the country in which the mercenary becomes involved should also be reviewed and analysed more carefully, so as to give greater weight in the definition to the nature and purpose of the illicit act with which an agent is paid to be associated. In brief, the information summarized here, although not complete, demonstrates the need to establish a legal definition of mercenaries that covers the various ways in which they act so that mercenarism in general can be effectively sanctioned and curbed by law.

IV. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

77. Although the International Convention against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly in its resolution 44/34 of 4 December 1989, nearly 11 years ago, it has still not entered into force. Nevertheless, 21 States have already either ratified or acceded to it. This means that it requires ratification or accession by only one more State to enter into force. That fact is significant in itself since it would provide mankind with yet another international instrument for the protection of human rights.

78. Despite the objections to the definition contained in article 1, the Special Rapporteur believes that the prompt entry into force of the International Convention would make it easier to improve this important instrument. It could be the starting point for efforts to address recent mercenary activities that have remained unpunished. The International Convention would facilitate preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case, procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

79. As noted above, 21 States have already completed the formal process of expressing their willingness to be bound by the International Convention. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libyan Arab Jamahiriya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention but have not yet ratified it. They are: Angola, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Republic of the Congo, Romania and Yugoslavia.

V. CONCLUSIONS

80. The Special Rapporteur would point out that no significant progress has been observed in cutting down the number of mercenary activities. They are continuing, particularly in the context of armed conflicts where some or all of the parties hire mercenaries to boost their military might and capacity to do damage.

81. The Special Rapporteur's mandate includes the follow-up to his visit to Cuba in 1999 to investigate the mercenary attacks on that country in 1997. The recent capture of one of the masterminds of these attacks who engaged in the recruitment, hiring, financing and training of mercenaries, possibly through intermediaries, offers an opportunity to elucidate the facts and to punish him for his criminal activities. However, all those outside Cuba who participated in the planning, preparation, cover-up and financing of the attacks have yet to be punished.

82. Various African countries continued to be affected by armed conflicts involving mercenaries in 2000. The interests of third parties and particularly oil, mining and diamond companies, and their control of the valuable natural resources of these countries are the causes of instability and the armed conflicts which are aggravating the suffering and poverty of their peoples.

83. The limitations and shortcomings of international norms and in particular of the current legal definition of mercenaries have been revealed by the fact that the number of mercenary activities has not diminished and that international efforts to prevent and prosecute such activities have been inadequate. The international community must, as a matter of urgency, focus on drafting a more comprehensive and effective definition in order to ensure that persons suspected of mercenary activities do not continue to evade punishment.

84. In view of the persistence of mercenary activities, the Commission on Human Rights should reaffirm its condemnation of these illegal acts because they are still being used to impede the exercise of the right of peoples to self-determination, and to undermine the sovereignty of States and the principle of non-interference in internal affairs, as well as to violate human rights and destabilize legitimate constitutional Governments. The Special Rapporteur has been able to confirm that there is a close connection between mercenary activities and violations of human rights, and particularly the right to life, physical integrity, freedom and security.

85. The Special Rapporteur has noted that private security and military assistance companies are investing increasingly in information technology, financial investigation services, military communication detection systems and electronic security systems. These companies are present in various African, American and European countries. The Special Rapporteur notes that these companies are continuing to hire mercenaries and that, more recently, pilots, aircrews and air bombardment specialists are being hired by air transport companies which, in third countries, are involved in illegal trafficking in arms and munitions, drugs, diamonds and troops. Not all these private companies recruit mercenaries, but the novelty of the offer, the efficiency promised in

situations that used to be reserved exclusively for State action and the fact that such companies are at the same time polyvalent, versatile and technologically well-equipped, could well draw them into intervening directly in armed conflicts of the countries with which they have signed contracts. The temptation, in such a scenario, of recruiting mercenaries to carry out such intervention is an inescapable reality.

86. Available data indicate that, as a result of the activities of such companies, demand for military experts, commandos, parachutists, explosives experts, airplane and helicopter pilots, cabin personnel, doctors and nurses who, in return for payment, agree to act as mercenaries has increased. However the prevailing view does not suggest that the demand for and supply of mercenaries is regulated by market forces but rather that it is the very existence of such companies that has boosted the demand. Efforts should therefore be made to ensure the international regulation and monitoring of these companies which offer military security internationally so as to prohibit in clear terms direct involvement in armed conflicts and the recruitment of mercenaries.

87. All the work done by the Office of the Special Rapporteur since its creation makes it abundantly clear that there is a direct relationship between mercenary activities and the human rights of the peoples affected by the criminal activities of mercenaries. Article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights proclaim the right of all peoples to self-determination. Mercenary activities, by impeding the exercise of the right to self-determination, constitute a violation of human rights. Mercenaries also violate human rights by committing crimes, carrying out executions, torture and other illegal acts referred to in international instruments.

88. More than 11 years after the General Assembly's adoption of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 21 States have agreed to be bound by this instrument. Thus only one more State is needed to meet the requirement for its entry into force.

VI. RECOMMENDATIONS

89. Past and present armed conflicts in Africa reveal the various forms assumed by mercenary activities. In addition to the profit motive of mercenaries and the interests of those who hire them there is a desire to control policy or play a dominant political role that guarantees access to Africa's natural resources, and particularly diamonds and oil. It is recommended that the Commission should not only reaffirm its condemnation of mercenary activities but also adopt measures to strengthen national, regional and international mechanisms that could be used to put an end to armed conflicts and the presence of mercenaries in Africa and to protect the natural resources to which the African peoples are entitled.

90. In connection with the above, the Commission should pay particular attention to the participation of mercenaries in illegal activities, such as terrorist acts, illicit trafficking in

persons, drugs, diamonds and weapons, as well as organized crime. For that reason, it is recommended that the Commission should explicitly condemn the participation of mercenaries in such acts.

91. It is recommended that, in view of the problems involved in coming up with a legal definition of mercenaries and a lack of legislation providing for the definition, prevention and punishment of mercenary activities, the Commission should promote consultations, working meetings and solicit expert opinions with a view to obtaining, as rapidly as possible, suggestions and proposals for a better legal definition of mercenarism and proposals for updating international instruments on the subject. The Commission should also be provided with studies on the extent and regulation of private offers of military security services on the international market, on the recruitment and use of mercenaries by these companies and on their implications for the enjoyment of human rights.

92. The studies referred to in the previous paragraphs should analyse the presence of mercenaries in military security companies and their involvement in violations of human rights and international humanitarian law. They should also, in the light of the acts committed, analyse the individual responsibility of mercenaries, of the companies for which they work and of the States or belligerent insurgent or paramilitary groups by which they are hired. A particularly careful analysis should be made of the responsibility of these companies, when they act on behalf of paramilitary organizations by providing instructors, for the acts committed by these organizations.

93. In view of the important role played by the illicit diamond traffic in prolonging and financing various armed conflicts in Africa, the Commission should call for the establishment of international machinery to monitor the diamond trade. The African producer countries should set up a single export office and export diamonds on the basis of certificates of origin issued by that office. The possibility of declaring a trade embargo on diamonds from Angola, the Democratic Republic of the Congo and Sierra Leone which have no certificate of origin should be studied. The price of inaction on the part of the international community is death and mutilation.

94. In view of the tragic consequences of intervention and attacks conceived and planned outside a given country in order to undermine its stability, create economic problems or stir up armed conflicts by using mercenaries, it is recommended that the Commission should reaffirm to States Members the need to condemn and prohibit any type and form of mercenary activity.

95. It is also recommended that the Commission should state that the territory of no State should be used for recruiting, hiring or training mercenaries nor for financing mercenary operations in other countries resulting in loss of life, damage to facilities and disruption of security in general; it should also remind States that they are under an obligation to investigate, prosecute, punish and prohibit all kinds of mercenary activities, and to investigate, punish and extradite, if necessary, perpetrators or masterminds of mercenary attacks who seek refuge in the territory of a country other than the one affected.

96. It is recommended that the Commission should promote and encourage accession to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries so as to bring about its entry into force as rapidly as possible.

97. Lastly, it is recommended that the Commission should reaffirm its convening of meetings of experts representing various geographical regions and various legal systems to analyse traditional and new forms of mercenary activities and the problems posed by gaps and shortcomings in the existing legal definition, with a view to holding such meetings in the course of the year 2001.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Report of the Secretary-General submitted pursuant to Commission resolution 2000/14

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Introduction

1. In paragraph 73 of its resolution 2000/14, the Commission on Human Rights requested the Secretary-General to submit a report to the Commission at its fifty-seventh session on the implementation of its resolution under the agenda item entitled "Racism, racial discrimination, xenophobia and all forms of discrimination". The present report is submitted pursuant to that resolution.

2. This report makes reference to the specific requests of the Commission in resolution 2000/14, and action taken to date to implement those requests.

I. IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION AND COORDINATION OF ACTIVITIES

3. No specific requests were made to the Secretary-General in Commission resolution 2000/14 regarding the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination and coordination of activities. It is to be noted that the secretariat of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, established within the Office of the High Commissioner for Human Rights, was also given responsibility for the implementation of the Programme of Action to ensure a better coordination of activities in preparation for the World Conference. In this regard, it is also to be noted that the Commission, in its previous resolution 1998/26, requested in paragraph 59 "that the activities of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination be focused towards the preparatory process for the World Conference ..." Further proposals for the implementation of the Programme of Action for the Third Decade, including strategies to ensure adequate funds are available to finance the activities of the Programme, will be considered after the conclusion of the World Conference to take into account the substantive outcomes of the World Conference.

II. SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

4. Concerning specific requests made in Commission resolution 2000/14 to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, attention is drawn to the most recent report of the Secretary-General transmitting the interim report of the Special Rapporteur to the General Assembly (A/55/304), as well as the report of the Special Rapporteur to the fifty-seventh session of the Commission (E/CN.4/2001/21).

5. In his statement to the first session of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Special Rapporteur referred to current problems occurring in many parts of the world related to racism, racial discrimination, xenophobia and related intolerance. He referred in particular to the activities of extreme right-wing political parties, racist violence against migrant workers, the

dangers of racist and xenophobic groups gaining political power in certain States, discrimination against the Roma and the expansion of racist hate speech on the Internet. He recommended the adoption of international measures to counter hate speech on the Internet.

6. The Special Rapporteur recommended that an international consultation be organized to discuss these issues. He noted that legal and penal measures exist against racism and intolerance, but suggested that greater economic and social measures need to be implemented to help victims of racism and racial discrimination. He proposed that each State should adopt a national plan to integrate minorities, migrant workers and indigenous populations into their societies, and that these plans should be presented by States to the World Conference. He recommended that economic and social measures against racism should be taken into account in the elaboration of such plans, and that such measures should equally be a part of the discussions at the World Conference.

7. In paragraph 39 of its resolution, the Commission requested the High Commissioner for Human Rights to "undertake research and consultations on the use of Internet for purposes of incitement to racial hatred, racist propaganda and xenophobia, to study ways of promoting international cooperation in this area, and to draw up a programme of human rights education and exchanges over the Internet on experience in the struggle against racism, xenophobia and anti-Semitism." OHCHR has undertaken a number of steps regarding this request. On 20 May 1999, the High Commissioner sent a letter to States and organizations inviting comments and asking for information and views with regard to this subject. The results of these consultations were submitted to the first session of the Preparatory Committee (A/CONF.189/PC.1/5).

8. The expert seminar on remedies available to the victims of racism, racial discrimination, xenophobia and related intolerance, held from 16 to 18 February 2000, had as one of its themes "Racism on the Internet: legal and technical questions" The report of the seminar (A/CONF.189/PC.1/8) contained the conclusions and recommendations of the experts. This meeting followed two previous seminars that OHCHR had held which focused on the question of the Internet and its use for the purpose of incitement to racial hatred and the dissemination of racist propaganda, as well as on ways to promote international cooperation in this area. (See the report of the expert seminar on the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, (E/CN.4/1998/77/Add.2) and the report of the United Nations seminar to assess the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination with particular reference to articles 4 and 6 (E/CN.4/1997/68/Add.1)).

9. OHCHR will submit a report to the second session of the Preparatory Committee on the use of Internet for purposes of incitement to racial hatred, racist propaganda and xenophobia, and on possible ways of promoting international cooperation in this area.

III. INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

10. Regarding the International Convention on the Elimination of All Forms of Racial Discrimination, attention is drawn to the most recent report of the Committee on the Elimination of Racial Discrimination to the General Assembly (A/55/18), which provides information on the International Convention and its application. The Committee also submitted a contribution to the first session of the Preparatory Committee (A/CONF.189/PC.1/12), in which it made recommendations for possible items for the provisional agenda of the World Conference.

IV. WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

11. Paragraph 51 of Commission resolution 2000/14 requests the High Commissioner, in her capacity as Secretary-General of the World Conference, "to continue to intensify the activities already initiated within the framework of the world information campaign with a view to mobilization and support for the objectives of the World Conference by all sectors of political, economic, social and cultural life, as well as other interested sectors." In this regard, it should be noted that the High Commissioner has taken a number of actions.

12. The High Commissioner for Human Rights initiated in August 2000 the Visionary Declaration, entitled "Tolerance and Diversity: A Vision for the 21st Century". This effort was launched in New York on 5 September 2000 during the United Nations Millennium Assembly by President Thabo Mbeki of South Africa. Former South African President Nelson Mandela is the Patron of the Visionary Declaration. The Declaration, which as at 23 January 2001 had been signed by 72 national leaders, has significantly increased public awareness about combating racism and about the World Conference. During the Summit Conference of the Organization of African Unity in August, the United Nations Millennium Summit in September, the European regional conference for the World Conference in October 2000, the regional conference of the Americas in December 2000 and the African regional conference in January 2001, as well as on other appropriate occasions, the High Commissioner has given interviews, issued public statements and conducted meetings at the highest levels to update world leaders and the international community at large on the preparations and processes leading up to the World Conference. Articles by the High Commissioner highlighting the importance of the World Conference were published in five major European newspapers on the occasion of Human Rights Day, which was commemorated on 11 December 2000.

13. Information activities were also undertaken by the Executive Coordinator for the World Conference during his last visit in South Africa through interviews with various print and electronic media. In general, regular press releases on preparatory activities are being issued and briefings for media representatives are being held. Information on the preparations for the World Conference is also regularly provided and updated on the OHCHR-World Conference Web site (www.unhchr.ch).

14. The first issue of the newsletter of the World Conference secretariat, entitled "Durban 2001: United against Racism", was launched by the High Commissioner on 11 December 2000, in commemoration of Human Rights Day. The newsletter intends to provide information about

the preparations undertaken by Governments, non-governmental organizations , civil society, the media and the World Conference secretariat for the World Conference. The newsletter will report on the events held and will include substantive articles on topics relevant to the World Conference and related issues, including preparations and events at the international, regional and national levels. The first issue of the newsletter was sent to all permanent missions, United Nations Development Programme resident representatives and United Nations resident coordinators, United Nations bodies and programmes, national institutions, accredited NGOs and key media sources. It is available in English and French and is also accessible in pdf format on the OHCHR Web site at www.unhchr.ch. The secretariat will publish five more issues of the newsletter as part of the build-up to the World Conference. Starting with the second issue, it will also be available in Spanish.

15. In cooperation with the United Nations Department of Public Information (DPI) several flyers and brochures on the Conference have been prepared and distributed at the regional seminars held in Geneva, Warsaw, Bangkok, Addis Ababa and Santiago de Chile, as well as at regional intergovernmental meetings. Also in preparation is a poster for the World Conference, designed by Tomi Ungerer, a renowned French artist.

16. On 23 October 2000, a special event at the United Nations in New York brought together Goodwill Ambassadors of various United Nations agencies and organizations, including those for the World Conference. Many of the Goodwill Ambassadors have agreed to advance the aims and objectives of the World Conference and the World Conference secretariat will maintain constant contact with them. Mr. Seamus Heaney, a Nobel prize winner for literature from Ireland and one of the seven Goodwill Ambassadors for the World Conference, also informed his colleagues about the World Conference at that time. It is planned to support special events or activities undertaken by the Goodwill Ambassadors in future, as well as others that could help focus public attention on the objectives and themes of the World Conference.

17. An ongoing collaboration with the South African Broadcasting Corporation SABC, Globo of Brazil, CNN and major print and electronic media organizations has been established. Upon the recommendation of OHCHR, DPI has provided scholarships to Globo and SABC to participate in the ongoing World TV Forum in New York, where, again with the collaboration of DPI, activities related to the World Conference are being highlighted. On 7 December 2000 a video conference hosted by international media and the Spanish-speaking television networks was held in Santiago de Chile in which the High Commissioner, the Executive Coordinator of the World Conference secretariat, and a Minister from the Office of the President of South Africa participated. The video conference originated from two main sites: United Nations Headquarters and the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago. There was access to the Conference from seven other sites: Bogota, Mexico City, Chicago, Geneva, San Francisco and Vienna.

18. Paragraph 55 of Commission resolution 2000/14 called upon the Secretary-General of the Conference "to expedite arrangements for accreditation of non-governmental organizations, including those that are not in consultative status with the Economic and Social Council, in accordance with ... Council resolution 1996/31 of 25 July 1996". The secretariat has worked closely with the Preparatory Committee and the Bureau of that body and as at 23 January 2001,

over 290 NGOs had been accredited either by the Preparatory Committee or the Bureau acting on behalf of the Preparatory Committee, in accordance with the procedures established in Council resolution 1996/31.

19. Paragraph 56 of Commission resolution 2000/14 requested the High Commissioner "to undertake appropriate consultations with non-governmental organizations on the possibility that they might hold a forum before and partly during the World Conference and, insofar as possible, to provide them with technical assistance for that purpose". The World Conference secretariat has had a close working relationship with NGOs since its inception with a view to facilitating their participation in the preparatory process, both in Geneva and in regional preparatory meetings. The secretariat will also facilitate the holding of an NGO Forum in Durban and the participation of NGOs as observers at the World Conference itself. With the assistance of the secretariat, NGOs have been able to raise funds for a number of regional and international meetings to prepare for the Conference. A list of NGO meetings is as follows:

(a) Steering Committee meetings: Warsaw, 15-18 September 2000; San José, 1 and 2 October 2000; Colombo, 22 and 23 October 2000; Dakar, 5 and 6 October 2000;

(b) Forums prior to the regional preparatory meetings: Strasbourg, France, 10 and 11 October 2000; Santiago, 3 and 4 December 2000; Dakar, 20 and 21 January 2001; Tehran, 17 and 18 February 2001;

(c) Networking meetings: Warsaw, 15-18 November 2000; Botswana, 8- 13 January 2001; Amman, 5-8 February 2001; Quito, 13-16 March 2001; Kathmandu, March 2001.

20. Paragraph 59 of Commission resolution 2000/14 requested "the Secretary-General, the United Nations specialized agencies and the regional economic commissions to provide financial and technical assistance for the organization of the regional preparatory meetings planned in the context of the World Conference" and stressed that "such assistance should be supplemented by voluntary contributions". OHCHR raised the necessary funds for regional preparatory meetings. It was assisted in particular by the European Commission which contributed 669,839 euros (US$ 579,395) for the regional conference of the Americas (Santiago, 5-7 December 2000); 681,484 euros (US$ 589,468) for the African regional conference (Dakar, 22-24 January 2001) and 769,112 euros (US$ 665,264) for the Asian regional conference, (Tehran, 19-21 February 2001). It is to be noted that the Council of Europe organized and financed the European Conference against Racism, which was held in Strasbourg, France, from 11 to 13 October 2000, which was the regional conference for the European region.

21. Participation at the regional preparatory meetings has been broad based and has included representatives of the Committee on the Elimination of Racial Discrimination and other human rights treaty bodies, several special rapporteurs, representatives of the Sub-Commission on the Promotion and Protection of Human Rights, representatives of national human rights institutions and representatives from the least developed and low-income countries.

22. Paragraph 65 of Commission resolution 2000/14 requested the High Commissioner "to explore ways and means of effective involvement of parliaments through the relevant

international organizations". The Executive Coordinator of the World Conference secretariat participated in the Conference of Presiding Officers of National Parliaments held in New York from 30 August to 1 September 2000. The Executive Coordinator informed participants at the meeting of the High Commissioner's efforts regarding preparations for the World Conference and her Visionary Declaration and explored ways and means of further involving parliaments and parliamentarians in the World Conference. As a follow-up to these efforts, the Secretary-General of the Inter-Parliamentary Union sent a letter to the Presiding Officers of National Parliaments with a view to encouraging parliaments to become actively involved in the preparation, holding and follow-up to the World Conference. The Council of the Inter-Parliamentary Union, at its 104th Conference held in October 2000, also approved the possible holding of a one-day parallel event for members of Parliament attending the World Conference.

23. Paragraph 68 of Commission resolution 2000/14 stressed "the importance of systematically adopting a gender-based approach throughout the preparations for and in the outcome of the World Conference". The High Commissioner has on many occasions reiterated the importance of systematically incorporating a gender-based approach in preparations for the World Conference and at the World Conference itself. How gender and racial discrimination intersect was examined at a seminar of experts for the Asian-Pacific region held in Bangkok from 5 to7 September 2000. In the course of the seminar, the experts discussed the issues of racism and racial discrimination in the context of migration and trafficking with particular reference to women and children. OHCHR and the United Nations Development Fund for Women collaborated with the United Nations Division for the Advancement of Women in organizing an expert group meeting on "Gender and Racial Discrimination" in Zagreb from 21 to 24 November 2000. The results of the meeting are to be made available to the Commission on the Status of Women at its forty-fifth session in March 2001. A copy of the reports of both the Bangkok and Zagreb meetings will be made available to the Preparatory Committee. OHCHR is also preparing a publication on gender and racial discrimination which should be available for distribution prior to the World Conference. It should also be noted that in the organization of regional intergovernmental meetings, the second session of the Preparatory Committee and the World Conference itself, the secretariat has endeavoured to ensure that a representative of the Committee on Elimination of Discrimination against Women has been or will be invited to participate and actively contribute to these meetings.

24. Paragraph 69 of Commission resolution 2000/14 recommended that "the particular situation of children should receive special attention during the preparations for and during the World Conference ...". At the first session of the Preparatory Committee, a study on the effects of racial discrimination on the children of minorities and those of migrant workers in the fields of education, training and employment was submitted (A/CONF.189/PC.1/11). Additionally, the secretariat has endeavoured to ensure that representatives of human rights treaty bodies, including the Committee on the Rights of the Child, participate and actively contribute to the meetings of the Preparatory Committee, the regional intergovernmental meetings and the World Conference itself. To this end, attention is drawn to the submission made by the Committee on the Rights of the Child to the first session of the Preparatory Committee which focused on racism and education (A/CONF.189/PC.1/15).

25. The High Commissioner has emphasized that youth should not only be an important focus of the World Conference, but also actively participate in the World Conference. To this end, she is recommending to all States that they include in their delegations one member under 20. Furthermore, the feasibility of organizing a Youth Forum to link participants with the youth in South Africa and also linking this event with UNICEF is under consideration. The secretariat is planning to issue a publication on youth and racism prior to the World Conference as well as to underscore the role of youth in the fight against racism.